**International Association of Machinists and Aerospace Workers, District No. 15, AFL-CIO *and* The New York Times Newspaper, Division of The New York Times Company and International Brotherhood of Electrical Workers, Local Union No. 164.** Case 22-CD-363

August 26, 1981

## DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by The New York Times Newspaper, Division of The New York Times Company, herein called the Employer, alleging that International Association of Machinists and Aerospace Workers, District No. 15, AFL-CIO, herein called the Machinists, had violated Section 8(b)(4)(D) of the Act.

A hearing was held pursuant to notice at Newark, New Jersey, on March 10, 1981, before Hearing Officer Frederick A. Infante. The Employer, the Machinists, the International Brotherhood of Electrical Workers, Local Union No. 164, herein called IBEW, and Eastern States Electrical Corporation,[1] herein called Eastern, appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer, the Machinists, and the IBEW filed briefs with respect to the merits of the dispute.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

Upon the basis of the entire record in this case, the Board makes the following findings:

### I. THE BUSINESS OF THE EMPLOYER

The New York Times is a New York corporation engaged in the publication of a daily newspaper. In the course and conduct of its business, the Employer annually receives gross revenues in excess of $200,000, which operations include subscriptions to national news services and the advertising of nationally sold brands and materials valued in excess of $50,000 which are transported in interstate commerce. Accordingly, we find that the Employer is engaged in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this proceeding.

### II. THE LABOR ORGANIZATIONS INVOLVED

The Machinists and IBEW are labor organizations within the meaning of Section 2(5) of the Act.

### III. THE DISPUTE

#### A. *The Work in Dispute*

The work in issue involves the removal and reinstallation of unit drive motors which power the printing presses at the Employer's Carlstadt, New Jersey, printing plant.

#### B. *Background and Facts of the Dispute*

In 1975, the Employer relocated some of its operations from the west side of New York City to a newly constructed plant in Carlstadt, New Jersey. The new plant was furnished with 35 unit drive motors for 30 presses and 5 folding machines. These unit drive motors weigh 1,100 pounds each and measure 3-1/2 feet in length, 21 inches in width, and 2 feet in height. They are suspended from the ceiling at a height of more than 10 feet from the floor, and access to them is restricted by waterlines, air ducts, and electric conduits.

At the time of the instant dispute the Employer was a party to a bargaining agreement with the Machinists. The Employer also had a manpower supply agreement with Eastern which, in turn, had a collective-bargaining agreement with IBEW. The instant dispute arose in March 1980, when the first malfunction of a unit drive motor occurred. Assistant Plant Manager Cox assigned the work of disconnecting the malfunctioning motor from the electrical source and the subsequent reconnection to electricians supplied by Eastern,[2] and the work of removing, reinstalling, and realigning the motor to machinists. Thereafter, by letter dated August 6, 1980, IBEW and Eastern proposed to the Employer that it submit the work assignment of removal and reinstallation to a four-way arbitration proceeding. On October 28, 1980, the Employer advised the Machinists of the proposal for arbitration and inquired whether the Machinists wished to par-

[1] Eastern, an independent contractor, is signatory to an agreement with the Employer under which it provides individuals to perform all work of an electrical nature at the Employer's Carlstadt, New Jersey, plant.

[2] The electricians provided by Eastern work under the direction and control of, and are given work assignments by, the Employer herein.

ticipate in the proposed arbitration. On October 31, the Machinists informed the Employer that it would not go to arbitration, and also stated that it "reserves to itself such course of action including appropriate job action and if necessary, strike activity, as it may deem advisable to protect its jurisdiction under the terms of the contract between us." In response to the Machinists strike threat, the Employer filed the instant charge on December 16, 1980.

### C. *Contentions of the Parties*

The Employer and the Machinists contend that the employees presently assigned to perform the work in dispute are entitled to it based on their superior skills and training; employer preference and employer, area, and industry practice; and economy and efficiency of the Employer's operation. The claim of IBEW to the work is based on the industry practice in New Jersey, and the contractual relationships between it and Eastern, and between Eastern and the Employer.

### D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to 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 the parties have not agreed upon a method for the voluntary adjustment of the dispute.

Based on the Machinists threat to strike and the parties' testimony that they have no agreed-upon method of adjustment of the dispute, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred,[3] and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the instant dispute is properly before the Board for determination.

### E. *Merits of 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 is an act of judgment based on commonsense and experience reached by balancing those factors involved in each case.[5]

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

#### 1. Collective-bargaining agreements

There is no specific reference to unit drive motors in either of the collective-bargaining agreements in evidence. The Machinists work jurisdiction contract clause states merely that "[t]he jurisdiction of work being performed by machinists shall not be altered during the life of this agreement." The contract between Eastern and the Employer provides that they are joint employers of the electricians represented by IBEW, and further states that the contract between Eastern and IBEW shall apply to all employees and that Eastern's responsibility shall include any and all work of an electrical nature that may be needed. Inasmuch as neither agreement is dispositive of the work in dispute, we find that the factor of collective-bargaining agreements does not favor an assignment to the employees in either group.

#### 2. Employer preference and employer, area, and industry practice

The record evidence shows that, for approximately 20 years prior to the Employer's relocation to New Jersey, the work in dispute was performed by machinists. Testimony does reveal, however, that electricians employed by a construction subcontractor did perform the work of initial installation of three of the unit drive motors in the Carlstadt facility. The area and/or industry practice is shown by the testimony of the Machinists business representative, Armao, who services the New York Daily News and New York Post, to the effect that removal and reinstallation of unit drive motors at those companies are performed by employees represented by the Machinists. Although IBEW contends that an industry practice exists in New Jersey, its evidence in this regard consists of testimony by an electrical foreman of a New Jersey printing concern who stated that the disputed work in his shop was performed by electricians prior to 1975, that presses containing unit drive motors have not operated in his shop since 1975, and that his employer is not in the newspaper business. From the foregoing, we conclude that the factors of employer preference and employer, area, and in-

[3] A violation of Sec. 8(b)(4)(D) occurs when a labor organization which represents employees who have been assigned work exerts unlawful pressure upon an employer to continue such assignment. *New York Typographical Union No. 6 (New York News, Inc.)*, 252 NLRB 553 (1980). It is immaterial that the electricians are not employees of the Employer inasmuch as jurisdictional disputes are not limited to competing groups of employees working for the same employer. See *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Western Electric Company, Incorporated)*, 141 NLRB 888, 894 (1963), enfd. 339 F.2d 145 (2d Cir. 1964).

[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).

[5] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

dustry practice favor an award of the work in dispute to employees represented by the Machinists.

3. Skills and training

The unrebutted testimony of the Employer's director of operations, Petzko, and Assistant Plant Manager Cox shows that the work in issue was assigned to the employees represented by the Machinists because only they have the skills, training, and experience necessary to perform the work. Cox further testified that said employees received training in the removal and reinstallation of unit drive motors both as apprentices with the company which makes the presses and as employees of the Employer, and that 24 of the 27 machinists at Carlstadt have performed the disputed work at the Employer's New York City location prior to the Employer's relocation. The disputed work involves, *inter alia*, the use of special tools, "special motor cradles" and other riggings designed by machinists to fit the specifications of the unit drive motors in issue, and which aid in their removal and reinstallation. By contrast, electricians are experienced in removing only straight drive motors which are lighter and smaller than unit drive motors and are not suspended from the ceiling, and, therefore, do not pose the special problems associated with the unit drive motors. Accordingly, we find the factor of skills and training favors an award consistent with the Employer's assignment.

4. Economy and efficiency of operation

Assistant Plant Manager Cox testified without contradiction that the Employer replaces unit drive motors on the Sunday shift by utilizing two machinists who have been held over from the previous shift on overtime, and two who are on regular shift time, and thereby minimizes costs with available skilled personnel. The record shows that, if the work were to be awarded to IBEW, the Employer would have to hire four additional electricians, at time-and-a-half pay rates, and also pay a 15-percent fee to Eastern in accordance with the latter's agreement with the Employer. In addition, because machinists use their specialized tools in the ordinary course of their duties, the Employer would have to purchase special tools and equipment for the electricians to use, and also would have to provide to electricians the same training program which machinists already have completed. Thus, an assignment of the disputed work to electricians would be inefficient and uneconomical because of duplicative and unnecessary substantial expenditures. Accordingly, we find that the factors of economy and efficiency favor the Employer's assignment to employees in the Machinists unit.

Conclusion

Upon the record as a whole, and after full consideration of all the relevant factors involved, we conclude that the Employer's employees represented by the Machinists are entitled to the disputed work based on their superior skills and training; employer preference and employer, area, and industry practice; and economy and efficiency of the Employer's operations. In making this determination, we are awarding the work in dispute to employees who are represented by International Association of Machinists and Aerospace Workers, District No. 15, AFL-CIO, but not to that particular organization or its members. This 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:

Employees of The New York Times Newspaper, Division of The New York Times Company, currently represented by International Association of Machinists and Aerospace Workers, District No. 15, AFL-CIO, are entitled to perform the work of removal and reinstallation of unit drive motors at the Employer's Carlstadt, New Jersey, newspaper plant.