Ironworkers, Local 29, affiliated with International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO *and* Tom Benson Industries and Glaziers, Architectural Metal and Glassworkers Local 740, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO. Case 36-CD-169

March 10, 1983

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Tom Benson Industries, herein called the Employer, alleging that Ironworkers, Local 29, affiliated with International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, herein called Ironworkers or the Respondent, 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 its members rather than to employees represented by Glaziers, Architectural Metal and Glassworkers Local 740, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO, herein called Glassworkers.

Pursuant to notice, a hearing was held before Hearing Officer Dale B. Cubbison on July 19 and 20 and October 19 and 20, 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

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 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, an Oregon corporation with its principal place of business in Portland, Oregon, is engaged as a contractor in the building and construction industry in the installation of glass and related products. During the past year, the Employer purchased and received goods and materials at its Portland, Oregon, location from outside the State having a value of $50,000. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Ironworkers and Glassworkers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer has had a collective-bargaining agreement with Glassworkers for many years, and with Ironworkers for approximately 4 years. In early 1980, the Employer was selected to perform the aluminum window frame installation work on the 42-story U.S. Bancorp Tower building in Portland, Oregon. The aluminum window frames used on the Banccorp Tower building are of two types: window wall and curtain wall. Window wall frames are anchored to the granite exterior of the building, and upon completion of the pedestrian will see the granite exterior interspersed with what appear to be traditional office building windows. Curtain wall frames are anchored to the steel structure of the building and upon completion of the project the project the pedestrain will see an entire story of glass, with no granite exterior. In early 1980, the Employer assigned the curtain wall work and window wall work to Ironworkers.

Glassworkers thereafter filed a contractual grievance, arguing that, under the Glassworkers contract with the Employer, the aluminum window frame installation work was to be assigned to employees represented by it. After the Employer refused to arbitrate the issue, Glassworkers filed on June 6, 1980, a suit under Section 301 of the Taft-Hartley Act to compel arbitration. On November 12, 1980, the U.S. District Court for the District of Oregon granted defendant Tom Benson Industries' motion to join Ironworkers as an additional party defendant. On April 10, 1981, the U.S. district court granted plaintiff Glassworkers motion for summary judgment and ordered Tom Benson Industries to proceed to arbitration in accordance with the Glassworkers/Tom Benson Industries contract. On September 1, 1981, arbitration of the grievance was held before a joint panel composed of an equal number of Glassworkers and Employer representatives. Ironworkers was not represented at and was not a party to the proceeding. The panel ruled that "the type of work in question" belonged to employees represented by Glassworkers.

Subsequently, the Employer reassigned certain portions of the aluminum window frame installation work to employees under the jurisdiction of Glassworkers. By letters of late February 1982, the Employer informed Glassworkers and Ironworkers that the window wall work was being assigned to glassworkers. By letter to the Employer of January 18, 1982, Ironworkers Business Representative Billy Mitchell demanded assignment of the curtain wall and the window wall and stated that, if assignment of that work was not made to employees represented by Ironworkers, Ironworkers would "take all lawfull [sic] steps to force the agreement including job-site action if and when necessary and appropriate." By letter dated April 7, 1982, Glassworkers Business Representative Ben Johnson notified the Employer that Glassworkers was "not in agreement" with the assignment of the curtain wall to ironworkers. On April 23, 1982, Mitchell informed the Employer that Ironworkers would picket the jobsite if the window wall work was not assigned back to employees represented by it. The assignment of the window wall work remained with employees represented by Glassworkers, and, when the work commenced in June 1982, glassworkers performed the window walling. The hearing in this case was held on July 19 and 20, 1982, and then continued until October 19, 1982. Following a July 20, 1982, Ironworkers threat of job action, the Employer assigned the window wall work back to employees under the jurisdiction of Ironworkers, effective July 27, 1982.

Meanwhile, Glassworkers, claiming that the arbitration award covered all aluminum window frame installation—window wall and curtain wall—filed suit in the U.S. district court. The district court denied the Glassworkers motion for summary judgment on this question on July 9, 1982. In that decision, the court, noting that the underlying jurisdictional dispute was before the NLRB, also stayed further judicial proceedings until the conclusion of the NLRB proceeding. Following the Employer's assignment of the window wall work back to employees represented by Ironworkers in late July 1982, Glassworkers sought a preliminary injunction against the Employer's reassignment. The U.S. district court denied that motion on September 3, 1982. Ironworkers had performed the curtain wall work throughout the relevant time period; glassworkers performed the window wall work from approximately June 1 to July 26, 1982, while ironworkers performed that work commencing on July 27, 1982.

B. *The Work in Dispute*

The work in dispute involves the installation of aluminum window framing systems called "window wall" and "curtain wall" on the 42-story U.S. Bancorp Tower building currently under construction in Portland, Oregon.

C. *The Contentions of the Parties*

The Employer contends that the employees represented by Ironworkers should continue to perform the work. Ironworkers International Union and Glassworkers International Union signed an agreement in 1961, set out in the "Handbook of Agreements of the International Association of Bridge, Structural and Ornamental Ironworkers" and known as the blue book. This agreement provides that employees represented by Ironworkers have jurisdiction over all curtain wall and window wall work on projects above the second floor. The Employer maintains that this jurisdictional agreement is still in effect and that it has made its work assignments for many years, including in this case, in reliance on and compliance with this agreement. The Employer additionally argues that the ironworkers have the skills and the abilities to do the curtain walling and the window walling and that the Impartial Jurisdictional Disputes Board, when that body was functional, consistently awarded such disputed work to employees within the jurisdiction of Ironworkers. As to the changing assignments of work made in the instant case, the Employer argues that it altered its original assignment of the disputed work only because of the adverse September 1, 1981, ruling in the Glassworkers arbitration.

Respondent Ironworkers essentially agrees with the Employer, stressing that it was not represented at or bound by the arbitration decision and that the Employer's preference is for employees represented by Ironworkers to perform the work.

Glassworkers asserts that the blue book agreement has been abrogated, employers no longer follow it, and glassworkers have been assigned much window wall work in Oregon and Washington. In addition, Glassworkers contends that glassworkers are better trained and better skilled in performing the work in dispute, that the arbitration decision awarded the work to employees represented by it, and that the arbitration decision should be binding on Ironworkers because it was joined in the U.S. district court proceeding and did not appeal the district court order compelling arbitration. Glassworkers also maintains that employees represented by it were first awarded the work and that the reason that the Employer now states that

it prefers that employees represented by Ironworkers perform the work is the threat of job action made to the Employer by Ironworkers during the hearing.

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: (1) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (2) the parties have not agreed upon a method for the voluntary adjustment of the dispute.

With respect to (1) above, it is clear that Ironworkers threatened in January and April 1982 to picket the Employer if employees represented by Glassworkers performed the disputed work. Neither party has since disclaimed the work in dispute. Accordingly, we find that reasonable cause exists to believe that Section 8(b)(4)(D) of the Act has been violated.[1] With respect to (2) above, the record contains no evidence that an agreed-upon method exists for the voluntary adjustment of the dispute. Accordingly, we find the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[2] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[3]

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

1. Collective-bargaining agreements

Both operative collective-bargaining agreements arguably assign the disputed work to the respective contracting Unions. The Ironworkers contract with the Employer provides, at article 12.1, that "[t]he work covered by this Agreement shall be that which is recognized as properly coming under the jurisdiction of the International Association of Bridge, Structural and Ornamental Ironworkers." Article 1, sections 1 and 2, of the Glassworkers contract with the Employer provides that "the Employer recognizes that the Union claims jurisdiction over all employees performing work as described below . . . door and window frame assembly . . . including the installation of the above." Accordingly, this factor does not support an assignment of the work to either group of employees.

2. Industry practice

While glassworkers are not infrequently assigned window wall and curtain wall work on projects, the record demonstrates that in the industry employees represented by Glassworkers are assigned such work only where the assigner of the work has no contract with Ironworkers. When employees represented by Ironworkers and Glassworkers are both present at a job, employees represented by Ironworkers are consistently awarded the curtain wall and window wall work. Accordingly, this factor favors assignment of the disputed work to the group of employees represented by Ironworkers.

3. Relative skills

It appears that both the employees represented by Ironworkers and the employees represented by Glassworkers possess the requisite skills for installing curtain wall and window wall. Accordingly, this factor does not support an award of the work to either group of employees.

4. Economy and efficiency of operation

The record shows that employees represented by Ironworkers performed window wall and curtain wall work on the project at issue faster than employees represented by Glassworkers. The Employer's ironworkers' superintendent, Gary Wohlgemuth, testified that, during the 8 weeks that employees represented by Glassworkers performed the curtain wall and window wall work on the U.S. Bancorp building, they completed just short of seven floors. Wohlgemuth testified that, after employees within the jurisdiction of Ironworkers took over the work in late July, the employees represented by Ironworkers, using the same size crew as those represented by Glassworkers, completed four floors per week. Accordingly, this factor favors the assignment of the disputed work to the group of employees represented by Ironworkers.

5. Employer past practice

Since 1978 or 1979, when it first signed a contract with Ironworkers, the Employer has assigned all window wall and curtain wall work on its projects to employees represented by Ironworkers. In doing so, Employer President Clarise Poppert and Personnel Manager William Turlay testified that

[1] In so finding, we rely on the January and April 1982 threats of picketing by Ironworkers; we do not rely on the July 20, 1982, threat.

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

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

the Employer follows the Ironworkers/Glassworkers blue book jurisdictional agreement in making assignments of curtain wall and window wall. As that document directs that such work is within the jurisdiction of employees represented by Ironworkers, the Employer has always assigned, prior to this case, curtain wall and window wall work to employees represented by the Respondent. Accordingly, this factor favors an award of the work to the group of employees represented by Ironworkers.

6. Employer preference

In light of its initial assignment of the work to employees represented by Ironworkers, its reassignment of the work to employees represented by Glassworkers only after being so ordered in the arbitration decision, and its specific statements of preference for employees represented by Ironworkers made at the first day of the hearing, it might appear that the Employer's desire is for the work to be performed by ironworkers. However, the Employer's current assignment of the work to ironworkers occurred almost immediately after Ironworkers threatened the Employer during the hearing in the instant proceeding with job action if assignment away from the glassworkers was not made. We do not find it proper under these circumstances to rely on the Employer's current assignment to and preference for the ironworkers in resolving this jurisdictional dispute. Accordingly, this factor does not favor an award of the work to either group of employees.

7. Arbitration decisions

As noted, Ironworkers did not participate in the September 1, 1981, arbitration decision by the Joint Conference Board made pursuant to the Glassworkers/Employer collective-bargaining agreement. Accordingly, this factor does not favor an award of the work to either group of employees.

8. Joint Board determinations

In all three instances in which the Construction Industry Jurisdictional Disputes Board has been faced with a Glassworkers versus Ironworkers claim for window wall work on projects of the Employer, the Disputes Board awarded the work to the employees represented by Ironworkers. Accordingly, this factor favors an award of the work to the group of employees represented by Ironworkers.

Conclusions

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by Ironworkers are entitled to perform the work in dispute. We reach this conclusion relying on the factors of industry practice, economy and efficiency of operation, the Employer's past practice, and Joint Board determinations. In making this determination, we are awarding the work in question to employees who are represented by Ironworkers, but not to that Union or its 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:

Employees of Tom Benson Industries who are represented by Ironworkers, Local 29, affiliated with International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, are entitled to perform the installation of aluminum window framing systems called "window wall" and "curtain wall" on the 42-story U.S. Bancorp Tower building currently under construction in Portland, Oregon.