

**International Association of Bridge, Structural and Ornamental Ironworkers, Local 3, AFL-CIO and Spancrete Northeast, Inc. and P. J. Dick Contracting, Inc. and Construction and General Laborers Union Locals 373 and 894, affiliated with Laborers' International Union of North America**

**Laborers' District Council of Western Pennsylvania, AFL-CIO and Spancrete Northeast, Inc. and P. J. Dick Contracting, Inc. and International Association of Bridge, Structural and Ornamental Ironworkers, Local 3, AFL-CIO. Cases 6-CD-772-1 and 6-CD-772-2**

26 August 1983

### DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS  
JENKINS AND ZIMMERMAN

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed in Case 6-CD-772-1 by Spancrete Northeast, Inc., herein called Spancrete, alleging that International Association of Bridge, Structural and Ornamental Ironworkers, Local 3, AFL-CIO, herein called the Ironworkers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activities with an object of forcing or requiring P. J. Dick Contracting, Inc., herein called P. J. Dick, and Spancrete to assign certain work to its members rather than to employees represented by Construction and General Laborers Union Locals 373 and 894, affiliated with Laborers' International Union of North America, herein referred to as the Laborers. Charges filed by Spancrete in Case 6-CD-772-2 alleged that Laborers' District Council of Western Pennsylvania, AFL-CIO, herein referred to as Laborers' District Council, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring Spancrete and P. J. Dick to assign work to members of the Laborers rather than to employees represented by Ironworkers.

Pursuant to notice, a hearing was held before Hearing Officer Maria M. Hardiman on 4 May 1983. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter briefs were filed by Spancrete and P. J. Dick jointly, Laborers' District Council, and Master Builders' Association of Western Pennsylvania.<sup>1</sup>

<sup>1</sup> Master Builders' Association of Western Pennsylvania, herein MBA, was permitted to intervene in the proceeding at the hearing. Ironworkers did not appear at the hearing or file a brief.

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 Spancrete Northeast, Inc., is a New York corporation engaged in the manufacture, sale, and installation of precast, prestressed concrete planks, with its principal place of business in South Bethlehem, New York. It annually purchases goods and materials valued in excess of \$50,000 directly from points outside the State of New York. The parties stipulated, and we find, that Spancrete is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

P. J. Dick Contracting, Inc., a Pennsylvania corporation, is engaged in general contracting for construction of commercial and industrial buildings. During the past 12 months, the Company's gross receipts exceeded \$500,000. During the same period the Company purchased for use at various jobsites in Pennsylvania materials valued in excess of \$500,000. The parties stipulated, and we find, that P. J. Dick Contracting, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the Act to assert jurisdiction herein.

#### II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Laborers Locals 373 and 894 and Ironworkers Local 3 are labor organizations within the meaning of Section 2(5) of the Act. Furthermore, it is undisputed, and we find, that Laborers' District Council of Western Pennsylvania, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

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

P. J. Dick is the general contractor for the remodeling and expansion of Three Rivers Stadium in Pittsburgh, Pennsylvania. P. J. Dick subcontracted the receiving, unloading, and erection of precast concrete members at the project to Spancrete, which commenced this work on 2 May 1983. Pursuant to collective-bargaining agreements with the International Laborers' Union and agreements with its locals, Spancrete assigned the work to employ-

ees represented by the Laborers, specifically a crew composed of permanent employees employed out of its Aurora, Ohio, plant, who are represented by Local 894, and local area employees hired through Local 373.

On 21 March 1983 Leo Puma, president and acting business representative of Ironworkers, called to request a meeting with P. J. Dick which took place the following day. Puma met with Raymond Monaco, the project superintendent, and Raymond Volpatt, P. J. Dick's vice president, and demanded that the erection of precast members be assigned to employees represented by Ironworkers. Puma stated that "he would go to court or do whatever he had to do to get the work."

On 24 March 1983 Puma sent a telegram to P. J. Dick notifying it that Ironworkers would sue to recover wages lost because of Spancrete's assignment of the work, contending that P. J. Dick was failing to abide by section 2(6) of the Ironworkers Employer Association collective-bargaining agreement, to which P. J. Dick was a party. On 25 March 1983 Ironworkers filed a grievance under the provisions of the collective-bargaining agreement alleging that P. J. Dick had violated a provision governing subcontracting.

Peter Livolsi, president of the Laborers' District Council, was made aware of Ironworkers' position concerning the stadium work and, in response, sent a letter to Volpatt on 7 April 1983 stating that the precast work properly belonged to laborers under the terms of national and local collective-bargaining agreements with Spancrete as well as the terms of a collective-bargaining agreement with P. J. Dick through its membership in the MBA. Livolsi stated further that, if P. J. Dick assigned the precast work to employees represented by Ironworkers, the Laborers would "strike the job."

On 13 April 1983 Spancrete, on behalf of P. J. Dick and itself, filed charges against Ironworkers and Laborers' District Council, alleging that both Unions had violated Section 8(b)(4)(D) of the Act. The work in dispute has continued and was still in progress at the time of the hearing in this case.

#### *B. The Work in Dispute*

The work in dispute involves the receiving, unloading, and erection of precast concrete members at the Three Rivers Stadium, Pittsburgh, Pennsylvania.

#### *C. The Contentions of the Parties*

P. J. Dick, Spancrete, Laborers' District Council, and the MBA take essentially the same position with regard to the work assignment and the scope of the award. They contend that traditional factors

of collective-bargaining agreements, employer preference, area practice, and economy and efficiency of operation, as well as prior Board decisions, support the assignment of the work in dispute to employees represented by the Laborers. They also contend that a broad work order is appropriate to eliminate future disputes between Ironworkers and the Laborers in the geographic area where their territorial jurisdictions coincide. P. J. Dick, Spancrete, and the MBA also contend that there is reasonable cause to believe that both Ironworkers and Laborers' District Council violated the Act.

As previously stated, Ironworkers did not appear at the hearing or file a brief in the instant case. Based on the actions of its president, Leo Puma, Ironworkers appears to claim that the work in dispute should be assigned to employees represented by Ironworkers based on its collective-bargaining agreement with the Ironworkers Employers Association by which P. J. Dick is bound.

#### *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.

It is uncontroverted that at the 21 March 1983 meeting Leo Puma, president of Ironworkers, stated that Ironworkers "would go to court or do whatever they had to do" to get the disputed work assigned to employees represented by it instead of employees represented by the Laborers. Raymond Monaco, P. J. Dick's project manager, testified at the hearing in this proceeding, that he understood this statement to encompass not only the possibility of a grievance or contract action but also the threat of a strike. Based on the foregoing, we find that reasonable cause exists to believe that Section 8(b)(4)(D) of the Act has been violated.

As to the charge filed against Laborers' District Council, the letter sent by Peter Livolsi to P. J. Dick contained an unequivocal threat to strike if the disputed work was assigned to employees represented by Ironworkers. At the hearing, Livolsi affirmed what he had said in his letter. Accordingly, we find that reasonable cause exists to believe that Laborers' District Council also violated Section 8(b)(4)(D) of the Act.

On the basis of the entire record, we conclude that there is reasonable cause to believe that violations of Section 8(b)(4)(D) have occurred. The parties have stipulated 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 this 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 disputed work after giving due consideration to various factors.<sup>2</sup> 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.<sup>3</sup>

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

##### 1. Certification and collective-bargaining agreements

Spancrete is a party to the International Laborers' National Construction Agreement which provides that "all field construction" is within the scope of the agreement. It provides additionally that work specified as being within the jurisdiction of laborers as described in the union constitution is within the scope of the agreement. The International Laborers' constitution incorporates the International Laborers' "Manual of Jurisdiction" which indicates that the following work is within the Laborers' jurisdiction:

Where prestressed or precast concrete slabs, walls or sections are used, all loading, stockpiling, hooking on, signaling, unhooking, setting and barring into place of such slabs, walls or sections. All mixing, handling, conveying, placing and spreading of grout for any purpose.

Spancrete also is party to collective-bargaining agreements with various Laborers locals at its three manufacturing plants located at South Bethlehem and Rochester, New York, and Aurora, Ohio. As noted, employees from the Aurora plant are part of the crew assigned to perform the disputed work. The agreements covering the Aurora employees, as well as the agreements at the two other manufacturing facilities of Spancrete, state that products manufactured and installed by Spancrete shall be installed by laborers.<sup>4</sup> Spancrete has no contract with Ironworkers.

<sup>2</sup> *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting System)*, 364 U.S. 573 (1961).

<sup>3</sup> *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

<sup>4</sup> Neither Laborers nor Ironworkers has been certified as representative of employees of Spancrete or P. J. Dick at the site of the work in dispute. Two Laborers locals that are not involved in the instant dispute have been certified as the bargaining representative of Spancrete's employees at its South Bethlehem and Rochester plants, respectively. Because employees from those two plants are not assigned to perform the

P. J. Dick is a party to the agreement between the Master Builders' Association of Western Pennsylvania and Laborers' District Council of Western Pennsylvania which covers the disputed work. P. J. Dick also has an agreement with Ironworkers through its membership in the Ironworkers Employer Association. That agreement provides that the disputed work is to be done by employees represented by Ironworkers and that no field work may be subcontracted.

We note that the work in dispute is to be performed pursuant to a contract with Spancrete. In light of this, Spancrete's agreements with the Laborers with their specific provisions regarding installation and the absence of any agreement on Spancrete's part with Ironworkers outweighs any contradictory agreement P. J. Dick may have with Ironworkers. Accordingly, we find that the factor of collective-bargaining agreements favors an award of the work to employees represented by the Laborers.

##### 2. The Employer's practice and preference

It has been Spancrete's practice to assign the installation of its product to Spancrete employees represented by various locals of the Laborers and it prefers to follow that practice in assigning the work in dispute. Typically, Spancrete, as it has here, dispatches a crew of permanent employees from one of its plants to a jobsite and supplements that crew with employees hired locally. The local employees are represented by the Laborers local with jurisdiction over the particular area in which the job is located. Spancrete's practice is consistent with the Laborers National Construction Agreement mentioned above. Spancrete's past practice and preference favor an award to employees represented by the Laborers.

##### 3. Area practice

Substantial evidence was introduced to show that Spancrete performs most of the type of work in dispute in the western Pennsylvania area, and its consistent practice has been to use employees represented by the Laborers to perform this work. A company called Flexicore has also employed employees represented by the Laborers to perform the erection and installation of precast, prestressed concrete members in western Pennsylvania area construction projects. There is no evidence that employees represented by Ironworkers have ever performed the work in dispute in this area. According-

disputed work, we find that these certifications are not material in determining which group of employees here should be awarded the work.

ly, this factor favors assignment of the work to employees represented by the Laborers.

#### 4. Economy and efficiency of operation

Spancrete maintains a permanent group of field personnel that it uses to erect its product. These employees are trained specifically to perform the work in dispute safely and efficiently. In selecting the local employees who supplement the installation crew, Spancrete prefers employees whose experience renders them familiar with its product and installation. All members of this traditional Spancrete crew are laborers. They perform all aspects of the installation, with the exception of the work performed by an overhead crane operator who is an operating engineer. By contrast, the ironworkers do not perform grouting work nor do they saw precast concrete. The use of the ironworkers would necessitate additional employees represented by other crafts to complete the work. Accordingly, this factor also favors an award of the work to employees represented by the Laborers.

#### Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by Laborers Locals 373 and 894 are entitled to perform the work in dispute. We reach this conclusion relying on Spancrete's past practice, its assignment preference, the collective-bargaining agreements, area practice, and economy and efficiency of operation. In making this determination, we are awarding the work in question to employees who are represented by Laborers Locals 373 and 894, but not to those Unions or their members.

#### Scope of the Award

Spancrete, P. J. Dick, the Laborers, and MBA request that the Board issue a broad work award on behalf of the Laborers proscribing coercive claims by Ironworkers to the work in dispute in a geographic area equal to the territorial jurisdiction of the two competing labor organizations. The proponents of a broad award contend that such an order is necessary in order to avoid similar jurisdictional disputes. Spancrete has been the target of similar jurisdictional disputes. In at least six instances they have culminated in Board determinations under Section 10(k) of the Act.<sup>5</sup> The Iron-

workers and Laborers here were in fact parties to the most recent of those proceedings.<sup>6</sup>

Spancrete has made similar requests in prior cases. The Board has refused such requests, stating: ". . . the fact that other unions, including affiliates of the Ironworkers in other localities, have engaged in such unlawful conduct in the past, does not demonstrate a proclivity on the part of [these Locals] to engage in further unlawful conduct. Nor does their alleged interest in obtaining work similar to that in dispute here, as such work becomes available on future Spancrete jobs, demonstrate the likelihood that they will again resort to unlawful means to obtain it."<sup>7</sup> While it is true that Ironworkers Local 3 was the respondent in a similar dispute in 1979, we do not find that earlier unlawful conduct sufficient to establish the kind of proclivity to engage in further unlawful conduct which might justify the broad order sought. In light of the substantial number of Spancrete's area projects, two jurisdictional work disputes before the Board over a 4-year period cannot justify an award reaching beyond the present jobsite. Therefore, the present determination is limited to the particular controversy which gave rise to this proceeding.<sup>8</sup>

#### 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 Spancrete Northeast, Inc., who are represented by Construction and General Laborers' Union Locals 373 and 894, affiliated with Laborers' International Union of North America, are entitled to perform the work of receiving unloading and erection of precast concrete members at the Three Rivers Stadium, Pittsburgh, Pennsylvania.

2. International Association of Bridge, Structural and Ornamental Ironworkers, Local 3, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Spancrete Northeast, Inc., and P. J. Dick Contracting, Inc., 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, International Association of Bridge, Structural and Ornamental Iron-

<sup>5</sup> *Bricklayers Local 42 (Spancrete Northeast)*, 192 NLRB 64 (1971); *Bricklayers Local 10 (Spancrete Northeast)*, 191 NLRB 638 (1971); *Iron Workers Local 6 (Spancrete Northeast)*, 196 NLRB 1182 (1972); *Iron Workers Local 417 (Spancrete Northeast)*, 219 NLRB 986 (1975); *Iron Workers Local 301 (Spancrete Northeast)*, 235 NLRB 1222 (1978); *Iron Workers Local 3 (Spancrete Northeast)*, 243 NLRB 467 (1979).

<sup>6</sup> *Iron Workers Local No. 3, supra*.

<sup>7</sup> *Iron Workers Local 6, supra* at 1185; *Iron Workers Local 417, supra* at 989; *Iron Workers Local 3, supra* at 470.

<sup>8</sup> Chairman Dotson would make a broad work award coextensive with the territorial jurisdiction of Ironworkers Local 3.

workers, Local 3, AFL-CIO, shall notify the Regional Director for Region 6, in writing, whether or not it will refrain from forcing or requiring Spancrete Northeast, Inc., and P. J. Dick Contract-

ing, Inc., 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.