

Local Union No. 80, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada and Stone & Webster Engineering Corporation and Local Union No. 451, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 4-CD-536

30 September 1982

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Stone & Webster Engineering Corporation, herein called the Employer, alleging that Local Union No. 80, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, herein called the Respondent or Pipefitters, 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 Local Union No. 451, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein called Ironworkers.

Pursuant to notice, a hearing was held before Hearing Officer Margarita Navarro on 4 October; 3, 5, and 8 November; and 8, 9, 13, 17, and 28-30 December 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, a Massachusetts corporation with its principal place of business in Boston, Massachusetts, is engaged in providing engineering and construction services throughout the United States. During the past year, the Employer provided services to points outside the State having a value in excess 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 Local Union No. 80, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, and Local Union No. 451, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts of the Dispute

In March 1981,¹ Stone & Webster received a contract to construct a methanol unit for the Getty Refining & Marketing Company. Stone & Webster employed ironworkers pursuant to the National Iron Workers Agreement to which it is a party. Stone & Webster awarded the mechanical contract to Henkles & McCoy which employed pipefitters. Stone & Webster is also a member of a multiemployer association which has an agreement with the Pipefitters.

On 20 May Stone & Webster held an equipment markup meeting. The purpose of this meeting was to provide representatives of the various unions with a list of the equipment to be installed on the project and to make assignments as to which Union would do the installation. During the meeting the Pipefitters and the Ironworkers agreed that the area practice dictated that the unloading of piping material into a designated storage area, by means of power rigging, was to be performed by ironworkers.

On 30 June another meeting was held to resolve the question of which Union would unload the piping material "on-site," that is, near or adjacent to the point of installation. The Pipefitters agreed that employees represented by the Ironworkers were entitled to unload the pipe, by power rigging, at the designated storage area which they agreed was offsite.² However, agreement was not reached regarding who would unload the pipe onsite. After this meeting the Employer made the following assignment: (1) unloading of piping material in the designated storage area by power rigging was to be performed by ironworkers; (2) unloading of piping

¹ All dates herein are in 1981.

² At this point the Employer had designated one storage area and another was not contemplated or discussed by the parties.

material in the designated storage area by hand or forklift, unloading to the warehouse, and unloading piping material elsewhere onsite by any means was to be performed by pipefitters.

The Unions complied with the assignment until 20 August. On that date Stone & Webster established a second designated storage area and assigned the work of unloading piping material, by power rigging, to ironworkers. The Pipefitters protested this assignment, arguing that the unloading of piping material anywhere other than the first designated storage area was the pipefitters' work. The Employer responded that its action was consistent with its previous assignment. The following day the Pipefitters picketed the project causing Stone & Webster to agree to cease unloading pipe at the second storage area while the Unions met in an attempt to resolve the dispute.

On 1 September, without having received a response from the Unions, the Employer issued a letter reiterating its assignment of work in the second storage area. The next day, as the ironworkers were unloading the pipe at the second storage area they were approached by 30 pipefitters. The ironworkers stopped the unloading and Stone & Webster again agreed not to use the area until the Unions resolved the dispute. On 16 September the Unions notified Stone & Webster that they were unable to resolve the dispute. The Pipefitters did agree to abide by the original assignment. At the time of the hearing the unloading of piping material had been completed.

B. *The Work in Dispute*

The work in dispute involves the unloading of piping material by power rigging into designated storage area #2 at the Getty Refining & Marketing Company's Methanol Plant Project in Delaware City, Delaware Refinery.

C. *The Contentions of the Parties*

The employer contends that its assignment was consistent with the agreement reached at the prejob markup meeting; that the dispute is properly before the Board; and that the assignment is consistent with area practice, economy and efficiency, and the Employer's preference. The Ironworkers basically puts forth the same contentions.

The Respondent takes the position that the collective-bargaining agreement and area practice dictate that the work in dispute be assigned to employees it represents.

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.

The evidence discloses that on 20 August Hitchens, the steward for the Pipefitters, protested the Employer's assignment of unloading pipe in the second designated storage area to employees represented by the Ironworkers rather than employees represented by the Pipefitters. The next morning the Pipefitters picketed the project. The pickets carried signs reading, "Notice, Stone & Webster destroying industrial standards. We protest against Stone & Webster not observing wages and standards."

During the hearing the Respondent presented evidence that it was engaged in area standards picketing. The Respondent's witness, Moorehead, testified that he was aware that employees represented by the Ironworkers were paid less than employees represented by the Pipefitters.³ Notwithstanding the Respondent's contention, the Board must still determine whether there is reasonable cause to believe that an object of the picketing was to force or require the Employer to assign the work to employees represented by the Pipefitters.⁴ In this regard we note that the picketing closely followed the unsuccessful attempt by the Respondent to persuade the Employer to reassign the work; that all discussion between the parties, both before and after the picketing, dealt exclusively with the assignment of the work; and that the picketing stopped when the Employer agreed to temporarily discontinue using the second designated storage area.

Accordingly, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. Further, there is no evidence and no party contends that an agreed-upon method exists for the voluntary adjustment of this dispute. Therefore, 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.⁵ The Board has held that its determination in a jurisdictional dispute is an act of judgment based on com-

³ The Respondent has not pursued this contention in its brief to the Board.

⁴ *Plasterers Local 383 (W. E. O'Neil Construction Co.)*, 266 NLRB 821 (May 16, 1983).

⁵ *NLRB v. Electrical Workers Locals 1212 (Columbia Broadcasting System)*, 364 U.S. 573 (1961).

nonsense and experience reached by balancing those factors involved in a particular case.⁶

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

1. Collective-bargaining agreements

The Employer is a party to a nationally negotiated collective-bargaining agreement between it, as a member of a multiemployer association, and the Ironworkers. Section 23 of that agreement provides that where "power . . . rigging is used to unload . . . material coming under the jurisdictional claims of the Union . . . it shall be the work of employees covered herein."

The Employer is also a signatory to a current collective-bargaining agreement between it, as a member of the Delaware Contractors Association, and the Pipefitters. Article II of that agreement states that "unloading . . . of all pipefitting material . . . by any method" is the work of employees represented by the Pipefitters. The provision in the Pipefitters agreement appears more specific as to materials and all inclusive as to methods of unloading. However, we are mindful of the fact that the Pipefitters has recognized, as consistent with area practice, the ironworkers right to unload piping material by power rigging in the designated storage area. Thus it is clear that the provision contained in the Pipefitters agreement, as applied, is not all-inclusive. We find that the existence of collective-bargaining agreements between the Employer and the Pipefitters and the Employer and the Ironworkers does not favor the assignment of the work in dispute to either employees represented by the Pipefitters or to employees represented by the Ironworkers.

2. Area practice

The Pipefitters contends that area practice dictates that the Employer may only designate one central storage area for the project, and ironworkers may unload piping material, by means of power equipment, only in this one area. Unloading of piping material by any means anywhere else on the project is the work of employees represented by the Pipefitters.

The Ironworkers contends that the Employer may designate as many storage areas as required and that, once a storage area had been designated, employees represented by the Ironworkers are entitled to unload the pipe by power equipment.

In support of their contentions both parties introduced extensive testimony. However, while the testimony was voluminous, it was also highly contra-

dictory. Thus, the record before us does not establish that there is a clear area practice. Accordingly, we find that this factor does not favor an award of the work in dispute to employees represented by either Union.

3. Economy and efficiency

The Employer did not employ employees represented by the Pipefitters. Employees represented by the Pipefitters were employed by Henkles & McCoy, a subcontractor on the project. The Employer introduced evidence to show that the unloading of piping material at the second designated storage area was sporadic in nature. Consequently, had Stone & Webster employed employees represented by the Pipefitters they would have been idle for most of the time. Additionally, Sekinger, the Employer's assistant labor relations supervisor, testified that had the Employer used pipefitters employed by the subcontractor it would have severely disrupted and hampered the work of the subcontractor. The pipefitters would have had to leave the site where they were working, go to the second designated storage area to unload the pipe, and then return to their regular jobs. The ironworkers, conversely, were employed by Stone & Webster and were already responsible for unloading the piping material at the first designated storage area. Accordingly, we find that the factor of economy and efficiency favors an award to employees represented by Ironworkers.

4. Employer assignment and preference

The Employer assigned the work in dispute to, and prefers that it be performed by, its employees represented by the Ironworkers. This factor, while not determinative, favors an award to these employees.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that the Employer's employees who are represented by the Ironworkers are entitled to perform the work in dispute. We reach this conclusion relying on economy and efficiency of operation, and the Employer's assignment and preference. In making this determination, we are awarding the work in question to employees who are represented by the Ironworkers, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.⁷

⁶ *Machinists Lodge 1743 (J. A. Jones Construction Co.)*, 135 NLRB 1402 (1962).

⁷ The Employer has requested that we issue a broad award. However, based on the record before us we find that a limited determination is appropriate.
Continued

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 Stone & Webster Engineering Corporation, who are represented by Local Union No. 451, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, are entitled to perform the work of unloading piping material by power rigging into designated storage area #2 at the Getty Refining & Marketing Company's Methanol Plant Project in Delaware City, Delaware Refinery.

appropriate. Compare, *Electrical Workers Local 3 (General Dynamics Communications Co.)*, 264 NLRB 364 (1982).

2. Local Union No. 80, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Stone & Webster Engineering Corporation 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 Union No. 80, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, shall notify the Regional Director for Region 4, 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.