

Newspaper & Mail Deliverers' Union of New York & Vicinity and New York Times Company and New York Mailers' Union No. 6

New York Mailers' Union No. 6 and New York Times Company and Newspaper & Mail Deliverers' Union of New York & Vicinity. Cases 2-CD-685 and 2-CD-686

22 December 1983

DECISION AND DETERMINATION OF DISPUTE

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

The charges in this Section 10(k) proceeding were filed 23 June 1983 by the Employer. In Case 2-CD-685, the Employer alleged that Newspaper & Mail Deliverers' Union of New York & Vicinity (the Drivers) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by New York Mailers' Union No. 6 (the Mailers). In Case 2-CD-686, the Employer alleged that the Mailers violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the Drivers. The hearing was held 1 July 1983 before Hearing Officer Richard L. De Steno.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, a New York corporation with its principal place of business in New York City, New York, is engaged in the business of publishing the New York Times, a morning daily and Sunday newspaper of general circulation. During the past year, the Employer derived gross revenues in excess of \$500,000 and purchased goods from outside the State having a value in excess of \$50,000. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Drivers and the Mailers are labor organizations within the meaning of Section 2(5) of the Act.

268 NLRB No. 55

II. THE DISPUTE

A. Background and Facts of Dispute

In or about August 1976, the Times commenced operations at Carlstadt, New Jersey, in a plant that is more automated than the Employer's Manhattan facility. At Carlstadt, the newspapers are assembled and loaded on trucks for delivery by means of a complex assembly system. Under this system, about 15 to 25 newspapers are mechanically stacked; the stack is carried along a conveyor and a brown paper "bottom wrap" is placed under the stack. The stack travels through a pacer to a tying machine which ties the group of papers into a bundle. The bundle then reaches a "bundle ejection device" (BED) at which point bundles are ejected into a series of carts. The carts travel along a roller coaster-like track known as the Sta-Hi Newstrack. At specific points along the track, the bundles are dropped down chutes and loaded onto trucks for delivery. The process from the placing of the bottom wrap through the BED is known as the insert tying line.

On Saturdays, the Times has been running an assembly through this system for the Sunday Times, known as a four sheet. This includes the help wanted, classified, real estate, part 2 of the main news, and business and finance sections, along with some suburban weeklies. The above-described Carlstadt system is used to assemble these sections for sale as part of the Sunday Times.

B. Work in Dispute

The disputed work involves the monitoring of that portion of the insert tying line on four sheet operations from after the bottom wrap to just prior to the tying machine as well as the cleanup of loose papers and other debris from the Sta-Hi Newstrack on Saturdays. All of this work is located at the Employer's Carlstadt, New Jersey plant.

C. Contentions of the Parties

The Employer contends that the Board should affirm the present assignment of all disputed work to employees represented by the Mailers based on its consistent past practice and the Unions' agreement. The Drivers contends that the collective-bargaining agreement supports its claim for the disputed work. The Mailers contends that the work in dispute should be assigned to employees it represents in accordance with company practice and preference, the terms of its collective-bargaining agreement, and an oral agreement with the Drivers.

D. *Applicability of the Statute*

The parties stipulated, and we find, that on 25 June 1983 the Drivers conducted a job action against the Employer because it failed to assign the work in dispute to employees represented by the Drivers. The parties further stipulated that on 21 June 1983 the Mailers threatened the Times with similar action unless the disputed work was assigned to employees it represents.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act.¹ Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

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

1. Company preference and past practice

The Company's stated preference favors assignment of the disputed work to employees represented by the Mailers.

With respect to past practice, the parties stipulated that employees represented by the Drivers have never been assigned to the insert tying line monitoring work. The parties also agreed that, almost from the outset of the Carlstadt operations, the Times has assigned the monitoring work to employees represented by the Mailers.

The Times and the Mailers contend that past practice favors assignment of the Saturday cleanup of the Sta-Hi Newstrack to employees represented by the Mailers. At the hearing, the Drivers contended that employees it represents have been cleaning the Sta-Hi Newstrack. However, in its post-hearing brief, the Drivers does not claim that past practice favors an award of the cleanup work to employees it represents. Rather, the Drivers brief implicitly concedes that employees represented by the Mailers have been removing loose papers

and debris from the Sta-Hi Newstrack on Saturdays.

Based on the foregoing, we find that the factors of company preference and past practice favor those employees represented by the Mailers.

2. Collective-bargaining agreements

Both Unions have collective-bargaining agreements with the Employer. The Drivers cites language in its contract stating that the delivery department will have exclusive jurisdiction over the insert tying line and the Sta-Hi Newstrack. The Mailers agreement provides that the recognized work jurisdiction of the Mailers shall be preserved. It is undisputed that the Mailers have historically exercised jurisdiction over the monitoring of the insert tying line from after the bottom wrap to just prior to the tying machine. With respect to cleaning of the Sta-Hi Newstrack, the Mailers contends that this work has been performed by six employees represented by it. The Employer argues that, since its collective-bargaining agreements with the respective Unions contain language indicating that each has a contractual claim to the disputed work, neither contract is determinative.

We find that the existence of collective-bargaining agreements between the Employer and the Drivers and the Employer and the Mailers does not favor the assignment of the work in dispute either to employees represented by the Drivers or to employees represented by the Mailers.

3. Economy and efficiency

Neither Union contends that the factor of economy and efficiency favors an award of the disputed work to employees it represents. At the hearing, the Employer also took the position that economy and efficiency do not weigh in favor of employees represented by either Union.

In its post-hearing brief, the Employer contends that it is required under the collective-bargaining agreement with the Mailers to pay overtime to the six employees represented by the Mailers who perform the Saturday cleanup of the Sta-Hi Newstrack. The Employer argues that, if the Board finds that this work should be performed by employees represented by the Drivers, the Times will be required to compensate the six employees represented by the Mailers as well as employees represented by the Drivers it would be forced to employ to perform this work. The Employer submitted no evidence in support of this contention.

Based on the foregoing, we find that the factor of economy and efficiency does not favor an award of the work in dispute to employees represented by either Union.

¹ There is no showing that the parties agreed to be bound by the results of any arbitration of this work jurisdiction dispute.

4. Agreement between Unions

The Employer and the Mailers contend that, pursuant to an August 1976 oral agreement, the Mailers relinquished its claim to having an employee it represents stationed on the BED system in exchange for the Drivers giving up its claim to the disputed insert tying line work. The Drivers does not specifically deny the existence of this agreement, but merely contends that the Mailers have failed to prove such an agreement was reached. Witnesses called by the Employer and the Mailers testified that Douglas La Chance, then president of the Drivers, agreed to allow employees represented by the Mailers to perform the disputed insert tying line work. The Drivers witness merely stated that he was a union business agent in 1976 and that he had no knowledge of any such agreement between the Drivers and the Mailers. The Drivers did not call Douglas La Chance as a witness.

It is undisputed that employees represented by the Mailers have been performing the insert tying line work since 1976 and that the Drivers did not contest the Mailers claim before 1982. Furthermore, the weight of the evidence shows that in 1976 the Drivers reached an agreement with the Mailers whereby the Drivers relinquished any claim to the insert tying line work. Accordingly, we find that the factor of agreement between the Unions favors employees represented by the Mailers.

Conclusions

After considering the relevant factors, we conclude that employees represented by the Mailers

are entitled to perform the work in dispute. We reach this conclusion relying on the Company's preference and past practice and, additionally, as to the insert tying line work, on the agreement between the Unions. In making this determination, we are awarding the work to employees represented by the Mailers, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of New York Times Company represented by New York Mailers' Union No. 6 are entitled to perform the monitoring of that portion of the insert tying line on four sheet operations after the bottom wrap to just prior to the tying machine and the Saturday cleanup of loose papers and other debris from the Sta-Hi Newstrack at the Carlstadt, New Jersey plant.

2. Newspaper & Mail Deliverers' Union of New York & Vicinity is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force New York Times Company to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Newspaper & Mail Deliverers' Union of New York & Vicinity shall notify the Regional Director for Region 2 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.