

Laborers International Union of North America, Local No. 646, AFL-CIO and General Refrigeration and Plumbing Company and Local Union No. 553, affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Case 14-CD-685

29 December 1983

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

The charge in this Section 10(k) proceeding was filed 8 July 1983 by the Employer, alleging that the Respondent, Local 646, 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 Local 553. The hearing was held 1 August 1983 before Hearing Officer Theron D. Lorimor.

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 Employer, General Refrigeration and Plumbing Company, is a Delaware corporation with principal offices in East Alton, Illinois, and is a mechanical contractor engaged in the installation of industrial piping, sewers, water mains, and refrigeration equipment. Annually, the Employer purchases and receives goods valued in excess of \$50,000, which goods are shipped directly to its East Alton facility from points located outside the State of Illinois. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 646 is a labor organization within the meaning of Section 2(5) of the Act. Local 553 did not participate in the proceedings, but its status as a labor organization is not contested.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer is a subcontractor installing pipe for a new waste water collection system in residential areas of Jerseyville, Illinois. Pensoneau Excavating Co., Inc., the general contractor, has an

agreement with Local 646 which limits subcontracting to companies that would honor a jurisdiction of work provision contained therein. The Employer, however, has customarily assigned the work in dispute to Local 553 and further claims that at a prejob conference held 13 June 1983 it made clear its intention of assigning the work to members of Local 553. On 10 June 1983 Local 646 claimed the work after Local 553 members began performing it. On 16 June 1983 several members of Local 646, including a steward, physically sat on the pipes, prevented their installation, and renewed their claim for the work. On 6 July 1983 unidentified persons in two pickup trucks and a car surrounded Local 553 members who were performing the disputed work and prevented them from continuing. No further work has been performed.

B. Work in Dispute

The disputed work involves unbundling and separating pipes following their delivery to the jobsite, placing them on a backhoe for transportation to the ditch, removing them from the backhoe at the ditch, and arranging them in a line alongside the ditch into which they are to be placed. The work is commonly referred to as "stringing."

C. Contentions of the Parties

The Employer contends that the work in dispute should be awarded to its employees represented by Local 553 because it customarily awards the work to those employees, and prefers to continue to do so, and because it is more efficient and economical to assign the work in such manner.

Local 646 contends that the work should be awarded to the employees it represents because past Joint Board awards and interunion agreements direct that similar work belongs to such employees. Local 646 acknowledges, however, that Local 553 is the sole pipefitter local in the Illinois area which has historically refused to agree to the Laborers performance of stringing.

Although it did not participate in the proceedings, it is clear that Local 553's position is that its members be assigned the work.

D. Applicability of the Statute

As noted above, after the Employer assigned the work in dispute to its own employees, who are members of Local 553, members of Local 646, including a steward, sat on the pipes and prevented their installation. On another occasion, after Local 646 renewed its plea for the work, members of Local 553 were surrounded by three vehicles full of persons and prevented from continuing their work.

Local 646 contends that a joint board for settlement of jurisdictional disputes exists and, therefore, the Board should decline to assert jurisdiction. However, the Joint Board to which Local 646 has been able to resort in the past has been inoperative for more than a year and has no grievances pending. Under these circumstances, the parties have no obligation to submit their work disputes to a joint board.¹ Moreover, because the Employer is not a signatory to that agreement, it is not bound by that procedure.²

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. 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 determining this dispute.

1. Collective-bargaining agreements

At all material times, Local 553 has had a collective-bargaining agreement with the Plumbing, Heating, Piping and Air Conditioning Contractors Association of Alton, Wood River and Vicinity, of which the Employer is a member. The agreement contains jurisdictional language which appears to encompass the work in dispute.³ The Employer has no collective-bargaining agreement with Local 646.

Local 646 has a collective-bargaining agreement with the Southern Illinois Builders Association, of which the general contractor is a member, which contains provisions forbidding the subcontracting of the disputed work to companies that do not observe the jurisdiction of work established therein. Nevertheless, the subcontracting agreement entered

into by the Employer and the general contractor provides that the Employer will supply all labor to complete the work. Thus the Employer retained control over the work assignment. The Employer is not a party to the Local 646 agreement with the Builders Association and has not agreed to be bound by its terms.⁴ Accordingly, we find the factor of collective-bargaining agreements favors an award of the disputed work to employees represented by Local 553.

2. Company preference and past practice

The Employer clearly prefers to award the work to its own employees, who are represented by Local 553. The fact that the general contractor might prefer Local 646 is irrelevant because it is the subcontractor's, not the general contractor's preference and past practice which is controlling.⁵ Local 646 submitted several Joint Board awards involving all parties where similar work was awarded to it. However, these awards contain ambiguous language, and there is no evidence that the Employer agreed to be bound by or complied with them. Furthermore, the Employer contends that it has never assigned stringing work to the Laborers, and Local 646 acknowledges that this Employer has always resisted its claim for the work. In view of the above, we find that the factor of employer preference and past practice favors an award of the disputed work to the employees represented by Local 553.

3. Area and industry practice

As indicated in "2" above, the Employer and Local 646 presented conflicting testimony about the assignment of the work in the area of the dispute. We therefore find that neither industry practice nor area practice is sufficiently clear to be helpful for our decision.

4. Relative skills

No particular skill or training is necessary to perform the work in dispute. Accordingly, this factor favors neither group of employees.

5. Economy and efficiency of operations

The Employer alleges that the stringing work is being performed across private property in residential areas and that stringing is not allowed to get far ahead of the actual installation work in order to avoid owners' complaints of pipe left unattended. Stringing is therefore performed as needed. It further argues that, if members of Local 646 are

¹ *Plumbers Local 703 (Aircor Carbon)*, 261 NLRB 1122 (1982); *Asbestos Workers Local 66 (API, Inc.)*, 267 NLRB 56 (1983).

² *Operating Engineers Local 139 (McWad, Inc.)*, 262 NLRB 1300 (1982).

³ The agreement provides that "[t]he initial unloading, stringing or distribution of pipe for gas and water mains and the installation shall be by the employees falling within the scope of this collective-bargaining agreement."

⁴ *Operating Engineers Local 139 (McWad, Inc.)*, supra.

⁵ *Id.*

awarded the work, the Employer would be faced with employing Local 646 members to work only intermittently, while waiting for members of Local 553 to finish their work, and more stringing would therefore be required. Local 646 argues that its members are paid at a lower hourly rate than Local 553 members and that their employment would result in economies for the Employer's operation. The Employer insists it is far more efficient to have its own employees perform the stringing and the installation work as necessary rather than have members of Local 646 standing idle during the installation work. We are persuaded by the Employer's argument and find that this factor favors an award of the work to the employees represented by Local 553.

6. Interunion agreements

In 1965, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and the International Hod Carriers, Building and Common Laborers Union of America, the parent organizations of the respective Unions involved here, signed a letter of understanding that a previous 1941 agreement between them would continue in effect. The 1941 agreement, by its terms, assigned the laying of nonmetallic pipe and the unloading and distributing of pipe for the ditches to the Laborers. However, there is no evidence that the Employer ever agreed to be bound to this agreement. The Board does not assign significant weight to such agreements where all the parties have not agreed to abide by them.⁶ Accordingly, this factor favors neither group of employees.

7. Impartial board determinations

Local 646 submitted into evidence 31 decisions of the National Joint Board for Settlement of Jurisdictional Disputes in the Building and Construction Industry. Twelve of these decisions cover the assignment of stringing work within the Twelve Counties Southwestern District Council, of which Local 646 is a member, some are based on the 1941 agreement discussed above, and some involve assignments of work by the Employer here. Local 646 witnesses declared they had no personal knowledge of the awards nor had they even read them. These decisions do not explicate the factors on which they are based. On previous occasions, the Board has refused to accord significant weight

to such awards when they fail to set forth the factors on which they are based.⁷ We therefore find that this factor favors neither group of employees.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 553 are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement between Local 553 and the Employer, Employer preference and practice, and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by Local 553, not to that Union or its members. This 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 General Refrigeration and Plumbing Company represented by Local Union No. 553, affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, are entitled to perform the work involving unbundling and separating pipes following their delivery to the jobsite, placing them on a backhoe for transportation to the ditch, removing them from the backhoe at the ditch, and arranging them in a line alongside the ditch into which they are to be placed at the site of the new waste water collection system in Jerseyville, Illinois.

2. Laborers International Union of North America, Local No. 646, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force General Refrigeration and Plumbing Company to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Laborers International Union of North America, Local No. 646, AFL-CIO, shall notify the Regional Director for Region 14 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.

⁶ *Asbestos Workers Local 66 (API, Inc.)*, supra.

⁷ *Sheet Metal Workers Local 9 (J. A. Jones Construction)*, 267 NLRB 22 (1983).