Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO *and* International Industrial Contracting Corporation[1] and Riggers Local 575, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 7-CD-431

29 March 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

The charge in this Section 10(k) proceeding was filed 19 May 1983 by the Employer, alleging that the Respondent, Carpenters Local 1102 (Millwrights), 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 Iron Workers, Local 575 (Riggers). The hearing was held on 25 July, 17 and 18 August, and 19 and 20 September 1983 before Hearing Officer Laura E. Atkinson.

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.[2]

I. JURISDICTION

The Company, a Michigan corporation and a member of the Michigan Cartagemen's Association, Heavy Haulers Division,[3] is engaged in the moving and erection of machinery at its facility in Royal Oak, Michigan, where it annually has gross revenues in excess of $500,000 and performs services outside the State of Michigan valued 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 Millwrights and Riggers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background*

The dispute involves the movement and installation of heavy machinery and raises issues related to the Board's determination of a similar dispute in *Carpenters Local 1102 (Don Cartage Co.)*, 160 NLRB 1061 (1966). Millwrights, Riggers, and MCA were parties in *Don Cartage*, which involved, inter alia, the assembly, installation, tightening, and adjusting of heavy machinery on building trades jobs performed by MCA members in certain Michigan counties. The Board in *Don Cartage* awarded to employees represented by Riggers all work involving the assembly and installation of machinery by means of power equipment. The Board awarded to employees represented by Millwrights all work involving the aligning, leveling, and final tightening of machinery. In making these awards the Board placed great, though not exclusive, reliance on then-existing understandings among Riggers, Millwrights, and their parent Internationals which apportioned the work in substantially the same manner as the Board's determination.[4]

B. *Facts of the Dispute*

At all times material herein, the Employer had separate collective-bargaining agreements with Millwrights and Riggers. In January 1983, the Employer contracted with Chrysler Corporation to load, transport, unload, and erect six large stamping presses being relocated to Chrysler Corporation's Outer Drive Manufacturing Center, Detroit, Michigan. Soon thereafter, business agents for Millwrights contacted representatives of the Employer and expressed interest in the Chrysler project. The Employer informed Millwrights that the project involved no work of the type it normally assigned to employees represented by Millwrights. Thereafter the Employer assigned all work on the project to employees represented by Riggers. In May 1983,

[1] At the hearing, Associated Riggers and Constructors, an Employer Association, was granted limited status to make an appearance and file a brief based on its current collective-bargaining agreement with Riggers Local 575.

[2] We hereby deny Millwrights' request for oral argument as the record and briefs adequately present the issues and the positions of the parties.

[3] Michigan Cartagemen's Association, Heavy Haulers Division (MCA) is a multiemployer bargaining association which at the time of hearing represented the Employer and about six other employer members engaged in the same business.

[4] The Board in *Don Cartage* noted that its decision rested "primarily" on a 1957 inter-union agreement among Millwrights, Riggers, and their parent Internationals adopting the work apportionment recommended by Dr. John T. Dunlop, who was commissioned by the Internationals to study and resolve their continuing disputes over work involving the movement and assembly of machinery. The so-called "Dunlop Award" provided, inter alia, that millwrights and riggers would work together in the assembly and anchoring of machinery installed with power equipment. The Board found that this aspect of the Dunlop Award and the 1957 agreement was modified by a subsequent opinion and decision of the Appeals Board of the National Joint Board for the Settlement of Jurisdictional Disputes, Building and Construction Trades Department, AFL-CIO, in the matter of *Chevrolet Spring & Bumper Plant, Livonia, Michigan*, also known as the "*Goodfellow*" decision. Specifically, the Board interpreted *Goodfellow* as awarding to riggers all work involving machine assembly through the use of power equipment. 160 NLRB at 1063, 1064, 1069.

while riggers were working on the project, Millwrights picketed. Millwrights' and Riggers' parent Internationals dispatched representatives to the project to resolve the dispute. No resolution was reached. Millwrights then sought to institute arbitration proceedings alleging that the Employer's assignment constituted a breach of its collective-bargaining agreement with Millwrights. Millwrights also sought to "interplead" Riggers in the arbitration proceeding. The Employer and Riggers refused to participate in the proposed triparty arbitration.

C. *Work in Dispute*

The disputed work involves the moving of heavy machinery from a temporary holding point to the point of final installation, and the assembly and final installation of the machinery.[5]

D. *Contentions of the Parties*

The Employer and Riggers contend that there is 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. The Employer and Riggers further contend that the work in dispute is of a type awarded to employees represented by Riggers in *Don Cartage*, and that, in any event, the work in dispute should be awarded to employees represented by Riggers based on their relative skills, efficiency of operation, area practice, and Employer preference.

Millwrights agrees that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred but contends that there is an agreed method for voluntary adjustment of the dispute based on tripartite arbitration. Millwrights further contends that the award in *Don Cartage* is no longer viable due to changed circumstances and points to a 1971 agreement between its parent International and that of Riggers which altered the inter-union understandings upon which *Don Cartage* was based. In addition, Millwrights contends that the Employer is required by its collective-bargaining agreement with Millwrights to follow the 1971 inter-union agreement and assign the disputed work to a composite crew of millwrights and riggers.

E. *Applicability of the Statute*

The parties stipulated at the hearing that from approximately 19 to 25 May 1983, Millwrights induced or encouraged individuals employed by the Employer to engage in a strike by picketing the Employer at Chrysler Corporation's Outer Drive Manufacturing Center, Detroit, Michigan, with an object of forcing the Employer to assign the work in dispute to employees represented by Millwrights. The parties further stipulated, and we find, based on the entire record that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated.

At the hearing, Millwrights presented evidence that on 13 June 1983 it submitted to the American Arbitration Association a demand for arbitration over the Employer's alleged breach of its collective-bargaining agreement with Millwrights by assigning the work in dispute to employees represented by Riggers. Millwrights presented further evidence that on 17 August 1983 it requested that Riggers be made a party to the arbitration proceeding and that its request was under consideration by the American Arbitration Association. Both the Employer and Riggers stated that they would not participate in the proposed triparty arbitration. Nevertheless, Millwrights contends that, if ordered, the proposed triparty arbitration would constitute an agreed method for voluntary adjustment of the dispute. We disagree that the triparty arbitration, even if ordered, would constitute an agreed method for voluntary adjustment of the dispute in view of the Employer's and Riggers' opposition to that forum.[6] We find, therefore, 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.

F. *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. Prior decisions and determinations of dispute

As mentioned above, Millwrights, Riggers, and the Employer, as a member of MCA, were before the Board in *Don Cartage*. The award in *Don Cart-*

[5] The Notice of Hearing incorrectly described the work in dispute as the "assembly, cleaning, aligning, and leveling of machinery." The parties stipulated at the hearing that the work in dispute is as described herein.

[6] See, e.g., *Stage Employees IATSE (Metromedia)*, 260 NLRB 424 (1982).

age, which applied to the work of MCA members on building trades jobs in certain Michigan counties, gave to employees represented by Riggers work involving the assembly and installation of machinery by means of power equipment, and gave to employees represented by Millwrights work involving the aligning, leveling, and final tightening of machinery.

The Employer produced evidence that as a member of MCA it has consistently followed *Don Cartage* in making assignments on building trades jobs in Michigan. Riggers adduced testimony to the same effect. The Employer also adduced testimony that the Chrysler project involved machinery installation with power equipment and involved no leveling or aligning of machinery and little final tightening.

Millwrights adduced testimony that the Employer assigned work similar to that in dispute to a composite crew of Millwrights and riggers on at least one project after *Don Cartage*. The Employer adduced testimony to rebut Millwrights' evidence. Even assuming that the Employer made the assignment as alleged by Millwrights, this fact does not detract from the fact that the Employer generally followed *Don Cartage* in making assignments on building trades jobs. We find, therefore, that the existing decision in *Don Cartage* is applicable to the work in dispute and favors an award to employees represented by Riggers.[7]

2. Inter-union agreements and industry practice

Millwrights produced evidence that, in 1971, the parent Internationals of Millwrights and Riggers entered into an agreement designed to resolve all then-present and future disputes between them over the rigging and installation of machinery. Article 3 of the agreement provides in relevant part:

> Article 3
>
> Machinery and/or Equipment found in Heavy Industrial Plants
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> . . . .
>
> (c) The handling of machinery and/or equipment from the temporary holding point in the area of installation or the cleaning and sub-assembly area to the final point of installation will be performed by an equal numbered composite crew of Iron Workers and Millwrights.
>
> (d) After composite rigging crew has safely placed machinery and/or equipment, Millwrights will complete installation, i.e., final alignment.

Millwrights adduced testimony that the 1971 agreement has not been repudiated and is generally followed throughout the country. While the Employer and Riggers presented evidence that the 1971 agreement was not followed on building trades jobs performed by the Employer in Michigan, the record reflects that outside Michigan the Employer applies the 1971 agreement to the extent permitted by area customs and practices. Accordingly, we find that the factor of industry practice tends to favor an award of the disputed work to a composite crew of millwrights and riggers.

Millwrights also adduced testimony that the 1971 agreement was designed to supersede all inconsistent work assignments, including those made by MCA members under *Don Cartage*. The Employer and Riggers disputed Millwrights' claim. The Employer presented evidence that the terms of the 1971 agreement were contemporaneously explained by representatives of Millwrights' and Riggers' parent Internationals in a meeting of millwrights and riggers in Detroit, Michigan. The Employer's evidence reveals that in this meeting, representatives of Riggers and its parent International explained the 1971 agreement as having no effect on work assignments made pursuant to *Don Cartage*. Riggers also adduced testimony that the present position of its parent International is that the 1971 agreement was not intended to apply to work by MCA members similar to that involved in *Don Cartage*. In view of this evidence and the fact that the 1971 agreement does not specifically address the decision in *Don Cartage*, it has not been established that an inter-union agreement exists as to work assignments by MCA members on building trades jobs within the 19 Michigan counties covered by *Don Cartage*.

3. Certification and collective-bargaining agreements

Neither Millwrights nor Riggers has been certified by the Board to represent the employees of the Employer and thus certification is not a factor favoring either group of employees. Both Mill-

[7] We note that a small amount of the work on the Chrysler project involved tightening of machinery—work awarded in *Don Cartage* to employees represented by Millwrights. Nevertheless, we find that *Don Cartage* supports an award of the disputed work to employees represented by Riggers where, as here, little tightening is to be done. As the Board stated at 160 NLRB 1079 of its decision:

> The determination we make [modifies the inter-union understandings] so as to assign to Riggers all assembly operations where power equipment is used, save for the final tightening, adjusting, leveling, and aligning which remains with the Millwrights . . . We note, moreover, that the *Goodfellow* decision in effect admonishes the Millwrights not to be so technical in their work claims as to require the use of Millwrights where the work is "so small, or so incidental, or of such short duration" as to warrant the use of riggers alone. We expect that admonition to be heeded, and we will take it into account in any future cases that may come before us . . . .

wrights and Riggers have collective-bargaining agreements with the Employer which cover the disputed work.

Millwrights' collective-bargaining agreement with the Employer requires the Employer to adhere to inter-union agreements involving Millwrights' parent International and other National or International Unions. However, for reasons discussed above, it has not been established, as Millwrights urges, that the parties to the 1971 agreement intended it to apply to building trades work by MCA members in the Michigan counties covered by *Don Cartage.*

Riggers' collective-bargaining agreement with the Employer requires that the Employer abide by the decision in *Don Cartage.* As we found above that *Don Cartage* favors an award of the disputed work to employees represented by Riggers, we conclude that Riggers' collective-bargaining agreement with the Employer also favors such an award.

4. Area practice

The Employer produced evidence that since 1966 it has consistently assigned work similar to that in dispute to employees represented by Riggers. Riggers adduced testimony that the Employer and other MCA members always assigned work similar to that in dispute to employees represented by Riggers. Riggers also adduced testimony that jobs performed by MCA members accounted for 90 percent of the work done by members of Riggers in the previous year.

Millwrights adduced testimony that the Employer and other MCA members had in the past assigned work similar to that in dispute to composite crews of millwrights and riggers. Millwrights adduced further testimony that employers who were not members of the MCA assigned work in dispute to composite crews of millwrights and riggers.

The record principally addresses the area practice of the Employer with regard to assignments on building trades jobs. We found above that as to such jobs the Employer followed *Don Cartage.* According to testimony adduced by the Employer about 75 percent of its work in the area involves nonbuilding trades jobs. Little evidence was presented as to the assignment practices of other MCA members, and nonmembers performing work on nonbuilding trades jobs in the area. Under these circumstances, we find the record inconclusive as to area practice.

5. Relative skills

Both Millwrights and Riggers have apprenticeship programs in which employees are trained to perform work similar to that in dispute. However, the Employer presented evidence that it exclusively assigns work like that in dispute to employees represented by Riggers. In addition, Riggers adduced testimony that 90 percent of the work done by its members in the previous year was on projects performed by MCA members. The Employer adduced unrebutted testimony that the extensive experience of employees represented by Riggers made them better qualified to do the work in dispute, with less supervision, than employees represented by Millwrights. We find, therefore, that the relative skills of employees represented by Riggers favors an award of the disputed work to them.

6. Efficiency and economy of operations

The Employer adduced testimony that assignment of the work in dispute to a composite crew of millwrights and riggers substantially increases the number of employees needed to perform the work and, accordingly, substantially increases the Employer's personnel costs. The Employer also adduced unrebutted testimony that the use of a composite crew creates idle time for employees of one craft when functions related to machinery installation must be exclusively performed by crewmembers of the other craft.

We find, therefore, that this factor favors an award of the work in dispute to employees represented by Riggers rather than a composite crew of millwrights and riggers.

7. Employer's assignment and preference

The Employer has assigned the disputed work to riggers and prefers to use riggers on similar work. Although not entitled to controlling weight, we find that the Employer's assignment and preference favor an award of the work to employees represented by Riggers.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by Riggers are entitled to perform the work in dispute. We reach this conclusion relying on *Don Cartage* and the Employer's practice of assigning work thereunder; the relative skills of employees represented by Riggers; the efficiency and economy of an all-rigger crew; the Employer's preference; and Riggers collective-bargaining agreement with the Employer. In making this determination, we are awarding the work in question to employees who are represented by Riggers, but not to that Union or its members.

Scope of Award

At the hearing, the parties requested that the scope of our determination extend beyond the dispute herein to include, at least, similar work performed by MCA members on building trades jobs in the Michigan counties in which both Millwrights and Riggers exercise jurisdiction. In its brief, the Employer argues for an order limited to its own work in this geographical area. In the circumstances of this case, and noting the history of juisdictional disputes between Millwrights and Riggers and Millwrights' contention that the 1971 agreement covers the relevant geographical area, our award shall apply to similar work by the Employer in any of the Michigan counties where both Riggers and Millwrights claim jurisdiction.

DETERMINATION OF DISPUTE

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

1. Employees of International Industrial Contracting Corporation, represented by Riggers Local 575, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, are entitled on building trades jobs to perform the moving of heavy machinery from a temporary holding point to the point of final installation, and the assembly and final installation of the machinery, including final tightening where that work is so small, so incidental, or of such short duration as to warrant the use of riggers alone.

2. Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require International Industrial Contracting Corporation to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from this date Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, shall notify the Regional Director for Region 7, 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.