

**Plumbers and Pipefitters Local 77 a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO and Associated General Contractors of Massachusetts, Inc. and Westcott Construction Corp. and Laborers' International Union of North America, Local Union No. 610. Case 1-CD-709**

30 March 1984

## DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND DENNIS

The charge in this Section 10(k) proceeding was filed 8 November 1983 by Associated General Contractors of Massachusetts, Inc. alleging that the Respondent (Plumbers Local 77) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer (Westcott Construction Corp.) to assign certain work to employees it represents rather than to employees represented by Laborers Local 610. The hearing was held 12 December 1983 before Hearing Officer Benjamin Smith.

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 Massachusetts corporation, is engaged as a general contractor in the construction industry and it annually performs contract work outside the Commonwealth of Massachusetts valued in excess of \$50,000. It also purchases and receives goods and materials directly from sources outside the Commonwealth of Massachusetts valued in excess of \$50,000 a year. 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 Plumbers Local 77 and Laborers Local 610 are labor organizations within the meaning of Section 2(5) of the Act.

### II. THE DISPUTE

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

Westcott has a contract with New England Power Company to perform construction work at the Brayton Point Power Plant in Somerset, Massachusetts. Westcott is constructing a piping system

to bring cooling water into Unit 4 from Mt. Hope Bay and discharge it back into the Bay. The pipe involved in this project is a 10-foot diameter reinforced concrete pipe which comes in 10-foot sections except for the "elbow" which is around 20 feet long. The pipeline is approximately 147 feet long. Westcott began work in May 1983 and expected to complete the project in February 1984.

On 2 November 1983 Plumbers business agent Michael Purcell met with Westcott's Project Superintendent John Monaghan. Purcell claimed that the piping work on the job should be assigned to Plumbers-represented employees.

On 4 November 1983 another meeting with Monaghan occurred at which both the Plumbers and the Laborers claimed the piping work. Purcell stated that it was his work and that he had lost enough work and he would not let this go, even if it meant picketing the site and stopping the project.

On 7 November 1983 Westcott assigned the piping work to the Laborers-represented employees and notified Purcell the next day. Purcell threatened to put up a picket line and said that he would picket the gate that the boilermakers and millwrights used to do vital repair work on Unit 3.

The installation of the pipe involves several steps. The supplier delivers the pipe to the jobsite and the laborers assist in unloading it. On top of the pipe is a hole through which a laborer places the end of a crane's wire so that the pipe can be hoisted by the crane. The laborer gives hand signals to guide the crane operator and hand guides the pipe from the stockpile area to the installation area. The laborer prepares the earth for laying the pipe by using a pick and shovel to smooth the area. Laborers also use laser equipment to determine the excavation's depth. For the first two sections of pipe laborers put in crushed stone, and then they place a concrete foundation.<sup>1</sup> For the other sections of pipe, a special gravel bedding is placed and laborers do handwork to smooth and compact the material. The laborers then shape the gravel in the center of the excavation to support the pipe. After the processed gravel is properly shaped to hold the pipe, a section of pipe is hoisted and guided into the hole and then lowered into the cradled-out area of crushed stone.<sup>2</sup> Laborers hand guide the pipe into position in the prepared bedding and connect it to the adjoining section of pipe. After the pipe is

<sup>1</sup> The laborer assists the hoisting and lowering of a bucket of concrete which is poured into wooden forms. If the concrete forms are to be destroyed, laborers strip the wooden forms away from the settled concrete. If the forms are to be reused, they are stripped by carpenters tended by laborers. Laborers also clean up and chip away any spilled concrete.

<sup>2</sup> Laborers also make any necessary adjustments in the gravel before the pipe is lowered.

in its proper position, the laborer goes inside the pipe section and releases the hoist from the pipe. When the pipe sections are joined, a cement mason applies mortar to the pipe joints, and laborers tend and prepare cement and assist the mason as needed. Then backfill is placed in the excavation and laborers spread out and compact bedding material in layers around the pipe. The backfill is then smoothed by laborers operating compactors and small rollers.

#### B. *Work in Dispute*

The disputed work involves the unloading, hooking up in the storage cradles, and setting into place of reinforced concrete pipe at the Brayton Point Power Plant project in Somerset, Massachusetts.

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

The Charging Party, the Employer, and the Laborers all contend that there is reasonable cause to believe that the Plumbers violated Section 8(b)(4)(D) of the Act and the proceeding is properly before the Board for determination of the dispute. They argue that on the basis of the Employer's collective-bargaining agreement with the Laborers, company preference and past practice, area and industry practice, and economy and efficiency of operation the work in dispute should be assigned to Laborers-represented employees.

The Plumbers contends that work involving any pipeline which carries "processed water" should be assigned to Plumbers-represented employees. The Plumbers asserts that its position is supported by area and industry practice.

#### D. *Applicability of the Statute*

On 4 November 1983 Plumbers business agent Michael Purcell met with Westcott's Project Superintendent John Monaghan and claimed the work in dispute. At that meeting he stated that it was his work and that he had lost enough work and would not let this go even if it meant picketing the site and stopping the project. On 8 November 1983, after being informed that the work had been assigned to Laborers-represented employees, he reiterated his threat to put up a picket line and stated that he would picket the gate that the boilermakers and millwrights used to perform important repair work on Unit 3 of the Power Plant.

It is undisputed that there is no agreed-upon method for voluntary resolution of this dispute.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon 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 making the determination of this dispute.

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

There is no evidence that the Board has certified either the Laborers or the Plumbers as the collective-bargaining representative for a unit of the Employer's employees.

The Employer is, however, signatory to an agreement of the Associated General Contractors of Massachusetts with the Massachusetts Laborers District Council on behalf of Laborers' International and its Local 610. That agreement clearly covers the work in dispute, providing that the unloading, handling, distribution and lowering of pipe, pipelaying, backfilling, and preparation for laying of pipe is unit work. The Plumbers does not have a collective-bargaining relationship with the Employer or the Associated General Contractors. Therefore, this factor favors a work assignment to Laborers-represented employees.

##### 2. Company preference and past practice

The Employer assigned the disputed work to Laborers-represented employees on 7 November 1983 and has indicated satisfaction with their performance. The Employer has in the past always assigned such work to Laborers-represented employees. Since 1975 the Employer has performed some 17 major projects in which Laborers-represented employees installed this type of pipe. The Employer has never assigned this work to Plumbers-represented employees. Accordingly, this factor favors an assignment of the disputed work to Laborers-represented employees.

##### 3. Area and industry practice

Several other contractors testified that they installed reinforced concrete piping in projects in Massachusetts using Laborers-represented, not

Plumbers-represented, employees. One contractor stated that in the past 15 years on various projects in eastern Massachusetts he had installed 50,000 feet of this type of pipe using laborers. Another contractor asserted that his company used laborers to install piping in 8-10 projects in that vicinity. A representative of two other contractors testified that his companies were involved in at least 20 jobs in which concrete piping was installed by Laborers-represented employees. Plumbers-represented employees did not install reinforced concrete pipe on any of these projects. Westcott's Executive Vice President Donald Carter testified that he had served as chairman of the Labor Policy Committee of the Associated General Contractors and in that capacity he became familiar with the members' practices. Carter stated that AGC members generally utilized Laborers-represented employees to handle and install reinforced concrete pipe. He also testified that the purpose for which the pipe will be used is not a factor in making an assignment.

A letter from a general contractor who performed work on an earlier project at the Brayton Point site was admitted into evidence. It stated that the contractor had performed the piping work with Laborers-represented employees.

The Plumbers submitted evidence that, in the late 1960s or early 1970s, Stone and Webster, a national mechanical contractor, had performed similar work on Unit 3 of the Brayton Point project and used Plumbers-represented employees for the piping work, and that J. A. Jones, another national contractor, installed an elbow pipe on Unit 4 using Plumbers-represented employees.<sup>3</sup> The Plumbers also submitted a 1966 decision of the National Joint Board covering a power plant in Long Island, New York, which assigned the piping work to Plumbers-represented employees. The Laborers also submitted a number of Joint Board decisions, some concerning Massachusetts construction sites, which awarded the work of handling and installing pipes to Laborers-represented employees.

We find that the weight of the record evidence of area and industry practice favors an assignment of the disputed work to Laborers-represented employees.

#### 4. Relative skills

The Laborers has a training center where laborers are specially trained for several weeks in this type of pipelaying operation. There is also evidence that Plumbers-represented employees are qualified to perform the work in question. There-

<sup>3</sup> The Employer contends that Stone and Webster and J. A. Jones had collective-bargaining relationships with the Plumbers which likely played a role in those assignments.

fore, this factor does not favor an assignment of the disputed work to employees represented by either Union.

#### 5. Economy and efficiency of operation

The Plumbers is claiming only the work of unloading and coupling of the pipe. The other work involved in the installation of pipe, including the preparation of the trench bottom, the smoothing and leveling of the processed gravel, the ascertaining of proper grade levels of the trench bottom, the smoothing and tamping of the levels of backfill, the assistance to the cement mason and the carpenter, is to be performed by Laborers-represented employees. If we assign the unloading and coupling of the pipe to Plumbers-represented employees, the Employer would be required to hire two crews, one of which would only perform a small portion of the work. Laborers-represented employees, on the other hand, perform all necessary work in the pipelaying operation. This factor thus favors an assignment of the work to Laborers-represented employees.

#### Conclusions

After considering all the relevant factors, we conclude that employees represented by the Laborers are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement between the Laborers and the Associated General Contractors covering the work, the Employer's preference and past practice, area and industry practice, and economy and efficiency of operation. In making this determination, we are awarding the work to employees represented by the Laborers, 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 Westcott Construction Corp. represented by Laborers' International Union of North America, Local Union No. 610, are entitled to perform the unloading, hooking up in the storage cradles, and setting into place of reinforced concrete pipe at the Brayton Point Power Plant project in Somerset, Massachusetts.

2. Plumbers and Pipefitters Local 77 a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Westcott Construction Corp. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Plumbers and Pipefitters Local 77 a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, shall notify the Regional Di-

rector for Region 1 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.