

International Longshoremens' Association, Local 1317 and C-I-L Chemicals, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 507. Case 8-CD-390

30 March 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

The charge in this Section 10(k) proceeding was filed 31 August 1983 by the Employer, alleging that the Respondent, International Longshoremens' Association, Local 1317, ILA Local 1317, 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 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 507, Teamsters Local No. 507. The hearing was held 12 October 1983 before Hearing Officer Karen L. Giffen.

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 wholly-owned subsidiary of C-I-L Chemicals, Inc., a Canadian corporation with United States headquarters in River Rouge, Michigan, and facilities in Connecticut, Illinois, New Jersey, and Ohio, is engaged in the distribution of sulfur and chloralkalal products throughout the midwest and northeast United States. The only facility involved herein is located at 2545 West Third Street, Cleveland, Ohio, where it annually receives goods valued in excess of \$50,000 directly from points located outside the State of Ohio. 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 ILA Local 1317 and Teamsters Local No. 507 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer is in the business of distributing chemical products. Chemicals are usually transport-

ed to the West Third Street facility by rail where they are then distributed to the Employer's customers by truck. On occasion the Employer receives the chemicals by ship at its Cuyahoga River dock adjacent to its facility. In such shipments the ship's load of chemicals, i.e., sulfuric acid, is unloaded and pumped into storage tanks at the Employer's facility. The Employer has received a total of about five or six such shipments at the rate of about one per year. The most recent of these occurred on 29 August 1983 from the vessel *Stolt Sydness*. The Employer expects that in coming years there will be three or four ship deliveries per year.

The dock work of unloading the ship includes the following: (1) preparing a hose for transporting the sulfuric acid; (2) attaching the hose to the ship's crane; (3) operating various valves on the hose, pipe, and storage tank; (4) inspecting the lines for leaks; (5) testing and measuring the sulfuric acid; (6) detaching the hose from the crane; and (7) returning the hose to dock level. Work performed on board the ship—attaching and detaching the hose to the ship's hatch, operating the crane, pump, and other mechanisms—is not under the Employer's control but rather is done by the ship's crew. The unloading process takes approximately 24 hours to complete. Because of the danger involved in handling sulfuric acid, employees involved in the unloading process wear full safety gear.

At the time of the hearing the Employer employed five employees who regularly load and unload sulfuric acid from trucks, railcars, and ships. These employees are represented by Teamsters Local No. 507.

Before 1978 the Employer's facility was located in Sandusky, Ohio. The Employer had a collective-bargaining agreement with Teamsters Local 20 at that location. After moving to Cleveland Teamsters Local No. 507¹ assumed Local 20's contract. Since then the Employer and Teamsters Local No. 507 have been parties to continuous successive collective-bargaining agreements. The agreement in effect at the time of the hearing—which was to expire 30 November 1983—provides in article I, paragraph 2, as follows:

The Employer recognizes the Union as the exclusive bargaining agent for all employees in the plant, loading dock or warehouse except guards, laboratory employees, office employees and supervisors, as defined in the National Labor Relations Act.

¹ There is no evidence that Teamsters Local No. 507 was ever certified by the Board as the exclusive representative of the Employer's employees.

On 3 June 1982 the Employer executed an agreement with ILA Local 1317 for the one-time unloading of the ship *Proof Trader*. That agreement states:

This agreement understood to not provide the bargaining unit with jurisdiction or to be establish any precedent for future work and does not constitute union recognition by the company as bargaining agent. [sic]

Similar one-time agreements were entered into between the Employer and ILA Local 1317 for the November 1979 unloading of the *Brage Pacific* and the August 1983 unloading of the *Stolt Sydness*. The Employer employs no ILA Local 1317 Laborers on a continuing basis but ILA Local 1317 members and Teamsters Local No. 507 members have participated in unloading every ship which the Employer has received.

World Shipping, Inc. served as the shipping agent for the *Stolt Sydness*. World Shipping hired ILA Local 1317 member linesmen to tie the ship upon its arrival and untie it upon its departure. The Employer's terminal manager, Kenneth Shaw, testified that he received a telephone call from World Shipping agent Hugh Goldie on 27 August 1983. Goldie told Shaw that the ILA was concerned about whether the Employer (C-I-L) was planning to use ILA Local 1317 laborers to unload the *Stolt Sydness*. Goldie related to Shaw a conversation which he had just had with Mike Scully, the dispatcher and head linesman of ILA Local 1317, wherein Scully advised Goldie that if C-I-L did not hire ILA laborers the ILA would not send its linesmen to the dock to bring in the ship. Scully also told Goldie that the ship's pilot, as an ILA member, would not bring the ship up the river if ILA linesmen were not there to dock it. Shaw then called Scully and told him that he did not intend to hire ILA Local 1317 members to unload the *Stolt Sydness*. Scully replied that C-I-L had used ILA members in the past and that it should do so again. On the morning of 28 August 1983 Goldie again called Shaw and told him that ILA Local 1317 Secretary-Treasurer John Baker had called him to advise him that if ILA members were not dockside to perform the unloading ILA Local would not send linesmen to bring in the ship. Goldie requested Shaw to get in touch with Baker. Shaw called Baker during the afternoon and told him that he did not want ILA laborers and that his own (Teamsters represented) employees could perform the work. Shaw asked what would happen if he did not hire ILA members. Baker replied that he did not know but that the ILA had a right to picket the vessel. Baker explained that if picketing occurred prior to the ship's arrival the pilot would

honor the picket line and not bring the vessel upriver. Alternatively if the vessel did arrive (and picketing took place thereafter) the ship might not ever get out of the river. Baker denied making any threat to Shaw but admits claiming the unloading work for ILA Local 1317 members. The conclusion of the Shaw-Baker conversation resulted in Shaw agreeing to hire two ILA Local 1317 laborers to unload the *Stolt Sydness*. The Employer also assigned two of its Teamsters Local No. 507 employees to the *Stolt Sydness* unloading operation.

The Employer maintains that the only reason it acquiesced in hiring two ILA Local 1317 members was the possibility that it could suffer substantial financial losses if ILA picketing resulted in delaying the unloading of the ship. Shaw testified that if the ship were not unloaded within 48 hours the Employer would have incurred losses of \$15,000 per day. The Employer contends that this same reason led to its prior decisions to execute one-time agreements with the ILA to unload ships despite the ILA laborers not being needed to carry out the unloading functions and, in fact, not actually performing the work. The Employer contends that its own (Teamsters represented) employees were better suited to unload the hazardous cargo from the ships and that the *Stolt Sydness* unloading was carried out by its own employees without the need for ILA laborer assistance. While the Employer admits that it had never before sought recourse through the Board's processes, the likelihood of an increasing number of deliveries by ship in coming years has motivated it to seek to terminate this ongoing ILA demand for work.

B. *Work in Dispute*

The disputed work involves the unloading of chemical products from ships or vessels at the private dock owned by the Employer at 2545 West Third Street, Cleveland, Ohio.

C. *Contentions of the Parties*

The Employer contends that there is reasonable cause to believe that ILA Local 1317 violated Section 8(b)(4)(D) of the Act by seeking to compel through the threat of picketing, the assignment of the disputed work to individuals represented by it rather than to employees of the Employer who are represented by Teamsters Local No. 507. On the merits, the Employer contends that the disputed work should be awarded to its employees who are represented by Teamsters Local No. 507 on the basis of the training which it provides its employees—both at the time of hire and on the job—regarding the safe handling of sulfuric acid (which the Employer does not provide for ILA laborers);

the step-by-step predelivery instructions which the Employer always provides its employees during the week prior to the ship's arrival; the Teamsters represented employees' experience and expertise which they have acquired as a result of their having actually performed the unloading duties; the collective-bargaining agreement between the Employer and Teamsters Local No. 507 which recognizes Teamsters Local No. 507 as the exclusive representative of all the Employer's "employees in its plant, loading dock or warehouse;" and the greater efficiency and economy of operations which would result from not having the additional and unnecessary ILA laborers at the worksite while the unloading operation was being performed by Teamsters represented employees.

Teamsters Local No. 507 takes essentially the same position as the Employer and contends that its employee members should properly be assigned the disputed work because of their training and skills, knowledge of procedures gained through actual experience, job performance history, and the collective-bargaining agreement.

The Respondent ILA Local 1317 asserts that its members should have the unloading work because of the area practice that its members unload all incoming ships both at private docks and at the Port of Cleveland; the history over the last several years with the Employer agreeing to assign two ILA laborers to unload each ship it has received; the familiarity its members have with unloading cargo of every variety; and the potential loss of jobs resulting from the Employer no longer assigning this work to its members.

D. *Applicability of the Statute*

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 making the determination of this dispute.

1. Certification and collective-bargaining agreement

The evidence discloses that while Teamsters Local No. 507 has not been certified by the Board as the exclusive collective-bargaining representative of the Employer's employees, it has in fact been recognized by the Employer as such and has served as that capacity (having taken over from Teamsters Local No. 20) since 1978 when the Employer moved its facility to the present location.

The collective-bargaining agreement in effect at the time of the hearing recognized Teamsters Local No. 507 as the exclusive representative of all employees of the Employer in the "plant, loading dock or warehouse." This constitutes the entire complement of the Employer's employees.

The Employer regularly employs no employees represented by the Respondent ILA Local 1317. The occasions on which the Employer has engaged ILA Laborers have occurred when on approximately six instances the Employer has received deliveries of chemical cargo from ships at its private dock. Each time that a delivery by ship was made, the Employer executed individual agreements with ILA Local 1317 to hire its laborers for a single unloading job. These have all resulted from ILA Local 1317's specific request to the Employer that it hire its laborers for the unloading duties.

In these circumstances, we conclude that the factor of the collective-bargaining agreement between the Employer and Teamsters Local No. 507 favors awarding the work in dispute to the employees represented by Teamsters Local No. 507.

2. Company preference and past practice

The Employer favors awarding the work to its employees represented by Teamsters Local No. 507 as explained above. To reiterate briefly, the Employer has invariably assigned its own Teamsters represented employees to unload incoming ships despite its also hiring ILA Local 1317 laborers for the very same work. Not only has the Employer assigned its own Teamsters represented employees to unload ships, but these employees have actually performed the work involved while the ILA Local 1317 laborers have primarily been on the side lines during the unloading operation. Accordingly, we believe that these factors favor awarding the work to employees represented by Teamsters Local No. 507.

3. Area and industry practice

ILA Local 1317 Secretary-Treasurer Baker testified that all foreign vessels arriving at both private docks and at the Port of Cleveland are unloaded by ILA represented laborers. The Employer contends in its brief that it is the only employer in the Great Lakes area which unloads shipments of sulfuric acid. In view of this fact the Employer maintains that ILA laborers do not normally perform this type of unloading work in this geographic area. Because of the unsubstantiated assertions which exist on the record we conclude that this factor does not favor awarding the work to either group of employees over the other.

4. Relative skills

Employer Representative Shaw testified as noted above that its employees who are represented by Teamsters Local No. 507 are given training as to the proper and safe procedures of handling (unloading) hazardous cargo both at the time of hire and on the job. The training includes films, slides, and a manual. The Employer also requires that new employees work with experienced employees before being permitted to work alone with sulfuric acid. No similar safety training is provided by the Employer for ILA Local 1317 represented laborers. The Employer also noted that its Teamsters represented employees have substantial practical experience in unloading sulfuric acid and other hazardous substances from all types of shipping vessels, both ground transported vehicles and ships.

ILA Local 1317's Baker testified that individuals represented by his union are shown films but it was not established whether these films dealt with handling hazardous substances, specifically sulfuric acid. The Respondent ILA contends that its laborers are experienced in handling all types of commodities and that they enjoy the added advantage of operational knowledge of various types of ship's equipment (pumps and valves), which could be of value in the event of an accidental spill of the substance being unloaded. Teamsters represented employees do not have this familiarity with ship's equipment but the Employer maintains that this is not critical in view of the fact that the ship's personnel performs the work associated with running its equipment and that Teamsters represented employees are appropriately trained in the safety aspects of mishaps while unloading.

In these circumstances, we believe that the relative skills factor favors awarding the work to the employees who are represented by Teamsters Local No. 507.

5. Economy and efficiency of operations

The record indicates that while the Employer has hired ILA Local 1317 represented laborers for the unloading of every ship from which it has received sulfuric acid these laborers have not carried out the jobs. Instead the Employer's Teamsters Local No. 507 represented employees have also been assigned to perform the very same unloading jobs and have actually performed the various duties necessary to complete the operation. It appears that the ILA Local 1317 represented individuals have appeared on the jobsite but have been unnecessary and superfluous to its completion. Accordingly, the factors of economy and efficiency of operations would favor awarding the work to employees of the Employer who are represented by Teamsters Local No. 507.

Conclusions

After considering all the relevant factors we conclude that employees represented by Teamsters Local No. 507 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of skills, safety, experience, training, employer preference, the collective-bargaining agreement, and efficiency and economy of operations. In making this determination, we are awarding the work to employees represented by Teamsters Local No. 507, 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 C-I-L Chemicals, Inc., represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 507 are entitled to perform the unloading of chemical products from ships of vessels at the private dock owned by the Employer at 2545 West Third Street, Cleveland, Ohio.

2. International Longshoremen's Association, Local 1317 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force the Employer to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Longshoremen's Association, Local 1317 shall notify the Regional Director for Region 8 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.