

Laborers Local 670, affiliated with Laborers International Union of North America, AFL-CIO and Famous Barr Company, A Division of the May Department Stores Company and Carpenters District Council of Greater St. Louis and Vicinity, Subordinate to United Brotherhood of Carpenters and Joiners of America, CLC. Case 14-CD-690

28 March 1984

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

The charge in this Section 10(k) proceeding was filed 11 October 1983 by the Employer, alleging that the Respondent (the Laborers) 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 the Carpenters. The hearing was held 2 November 1983 before Hearing Officer Susan W. Wauck.

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 division of a New York corporation, is engaged in the operation of a retail department store at its facility in Fairview Heights, Illinois, where it annually derives gross revenues in excess of \$500,000 and purchases and receives goods valued in excess of \$50,000 that are shipped directly 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 the Laborers and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer owns and operates 16 retail department stores in the St. Louis, Missouri area including the one involved here in Fairview Heights, Illinois. The Employer employs a number of maintenance carpentry workers at its St. Louis area stores. For over 30 years the Employer has had

collective-bargaining agreements with the Carpenters covering the maintenance carpenters in its Missouri stores. On 1 May 1983¹ the Employer and the Carpenters signed a 3-year contract which for the first time extended coverage to its stores in two Illinois counties including the Fairview Heights store.

In anticipation of the 1983 holiday season, the Employer prepared specialty gift shops in its Fairview Heights store. In October refurbished display cases and other fixtures were delivered to the store from the Employer's warehouse. The Employer assigned the work of unloading and transporting display cases and other fixtures from delivery to the point of installation, constructing and installing such fixtures, and all cleaning associated with this work to its maintenance carpentry employees represented by the Carpenters. This was in accord with its practice at its other St. Louis area stores. Prior to the signing of the contract with the Carpenters which extended coverage to the Fairview Heights store, a carpentry contractor had performed this work at Fairview Heights with employees represented by the Carpenters.

On 7 October the Laborers business manager Craig told the Employer's General Carpenter Foreman Eckert that according to an international agreement between the Laborers and the Carpenters 50 percent of the work of transporting the display cases and other fixtures belonged to the Laborers. Craig also claimed the cleanup work on behalf of the Laborers. Eckert replied that the Employer had an agreement with the Carpenters covering such work and that he was not going to hire any laborers. Craig said that he would "just have to put up a picket." Later that day, and again on 10 and 11 October, the Laborers picketed the various entrances to the enclosed mall in which the Employer's store is located and at entrances to the parking lot surrounding the mall.

B. Work in Dispute

The disputed work involves: the transporting of display cases and other fixtures delivered to the Employer's Fairview Heights facility from delivery vehicles to the point of installation on the Employer's premises; the cleaning of the display cases and other fixtures; the removal of debris resulting from the installation of the display cases and other fixtures; and the disposal of debris resulting from the removal of the display cases and other fixtures from their packaging.

¹ All dates refer to 1983.

C. Contentions of the Parties

The Employer and the Carpenters contend that the work in dispute should be assigned to employees represented by the Carpenters on the basis of the collective-bargaining agreement, past practice, employer preference, skills, and economy and efficiency of operations.

The Laborers contends that a collective-bargaining agreement with the Employer and a memorandum of understanding between the Laborers International and the Carpenters International favor awarding the disputed work to employees represented by the Laborers.

D. Applicability of the Statute

The record indicates that on 7 October the Laborers business manager demanded of the Employer's general foreman that the disputed work be assigned to employees represented by the Laborers. When the demand was refused, the Laborers immediately picketed the Fairview Heights store. The parties agreed that there is no voluntary method for the adjustment of jurisdictional disputes by which all three parties are bound.

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. Collective-bargaining agreements

As previously indicated, the Employer has had collective-bargaining agreements for more than 30 years with the Carpenters covering its St. Louis area stores in Missouri. On 1 May the Employer and the Carpenters signed a contract which expanded coverage to include the Fairview Heights store. A memorandum of understanding describing the work to be performed by unit employees was added as addendum 1 to the agreement. The

memorandum specifically includes "the uncrating and setting in the department of merchandise display fixtures" and "the moving and set up of glass cube units and showcases."

The Laborers contends that it has a collective-bargaining agreement with the Employer. The putative contract is a booklet copy of a collective-bargaining agreement between two Laborers locals and the Southern Illinois Builders Association. The Employer's Fairview Heights assistant store manager, Bonnie Martin, signed the back cover of this booklet on 21 September 1983. Martin signed the booklet in the midst of a brief dispute with members of the Laborers who had claimed the right to perform landscaping work which the Employer had contracted to an independent nursery. It is undisputed that Martin did not read the booklet, was not told that she was signing a collective-bargaining agreement, and does not have the authority to negotiate or sign collective-bargaining agreements for the Employer. It is also undisputed that the Employer has no connection with the Southern Illinois Builders Association.

The Employer was not a party to the 1965 memorandum of understanding between the Laborers International and the Carpenters International which stated that the transportation of fixtures from delivery vehicles to the point of installation would be done by a composite crew of laborers and carpenters and that the cleaning up of debris would be laborers' work. There is no evidence that the memorandum, relied on here by the Laborers, was ever put into effect.

We find that the factor of collective-bargaining agreements favors assigning the work in dispute to employees represented by the Carpenters.

2. The Employer's preference and past practice

The Employer, in accordance with its preference, assigned the work in dispute to employees represented by the Carpenters. In the prior 10 years that the Fairview Heights store had been open, the work in dispute had been performed by an independent carpentry contractor with employees represented by the Carpenters. Further, employees represented by the Carpenters have been assigned the disputed work in the Employer's St. Louis area stores for the past 32 years. We find that the Employer's preference and past practice favor awarding the work to employees represented by the Carpenters.

3. Relative skills

The evidence shows that the performance of the work in dispute does not require the exercise of

any special skills that are the province of either employees represented by the Carpenters or those represented by the Laborers. Rather, it appears that the employees represented by both Unions are sufficiently skilled to perform satisfactorily the disputed work.

4. Economy and efficiency of operations

The Employer does not employ laborers. It would face additional costs by hiring them to perform the work in dispute while retaining its maintenance carpentry employees to perform other traditional work assignments. Accordingly, we find that this factor favors the assignment of the work to employees represented by the Carpenters.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Carpenters are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's collective-bargaining agreement, the Employer's past practice, the Employer's preference, and the economy and efficiency of its operation. In making this determination, we are awarding the work to employees represented by the Carpenters, 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 Famous Barr Company, a division of the May Department Stores Company, represented by Carpenters District Council of Greater St. Louis and Vicinity, subordinate to United Brotherhood of Carpenters and Joiners of America, AFL-CIO, CLC, are entitled to perform the transporting of display cases and other fixtures from delivery vehicles to the point of installation; the cleaning of the display cases and other fixtures; the removal of debris resulting from the installation of the display cases and other fixtures; and the disposal of debris resulting from the removal of the display cases and other fixtures from their packaging at the Fairview Heights store.

2. Laborers Local 670, affiliated with Laborers International Union of North America, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Famous Barr Company, a division of The May Department Stores Company, to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Laborers Local 670, affiliated with Laborers International Union of North America, 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.