

**Local 395, International Association of Bridge, Structural and Ornamental Iron Workers Union, AFL-CIO and Delta Star-Traffic Inc., a wholly owned subsidiary of Delta Star Electric, Inc. and Local 41, Laborers International Union of North America, AFL-CIO. Case 13-CD-337**

31 July 1984

**DECISION AND ORDER QUASHING  
NOTICE OF HEARING**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Delta Star-Traffic Inc. (the Employer) alleging that Local 395, International Association of Bridge, Structural and Ornamental Iron Workers Union, AFL-CIO (the Respondent or Iron Workers) has violated Section 8(b)(4)(D) of the Act. A hearing was held before Hearing Officer Rochelle Golub on 12 March 1984.<sup>1</sup> The Employer, the Respondent, and Local 41, Laborers International Union of North America, AFL-CIO (the Laborers) appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings.

**I. THE BUSINESS OF THE COMPANY**

The parties stipulated that the Employer, an Indiana corporation, is engaged in the electrical contracting business in Indiana. In the year prior to the hearing, the Employer purchased and received goods and services valued in excess of \$50,000 directly from suppliers outside the State of Indiana. Accordingly, the parties stipulated, and we find, that the Employer is an employer within the meaning of Section 2(6) and (7) of the Act.

**II. LABOR ORGANIZATIONS INVOLVED**

The parties stipulated, and we find, that the Respondent and the Laborers are labor organizations within the meaning of the Act.

<sup>1</sup> All dates are 1984 unless otherwise specified.

**III. THE DISPUTE**

*A. Background and Facts of the Dispute*

The Employer is a subsidiary of Delta Star Electric, Inc. (Delta) and was formed in 1982 when Delta merged with Morse Electric Company (Morse) to form the Employer's traffic or highway construction division. The Employer is presently engaged in the installation of signs, fences, and guardrails along the Indiana Toll Road. Morse was engaged in the highway construction business for 30 years prior to the merger, performing work identical to that at issue here. Morse consistently assigned the rebar, assembly, and installation work to Laborers-represented employees, and at least since 1965 was a signatory to successive contracts with the Laborers. In January 1983, after the merger, the Employer signed an agreement adopting the 1982-1984 agreement between the Laborers and an employers' association of which the Employer is not a member. The adoption agreement provides for no alterations in the terms and conditions of the association contract.

On 16 February, at Milepost No. 1 of the Indiana Toll Road where the Employer was in the process of installing a box truss sign, two persons identifying themselves as members of the Iron Workers approached the Employer's superintendent Wittling and asked why Laborers-represented employees were performing Iron Workers work. Wittling suggested a meeting between the Employer and the business agents of the Laborers and Iron Workers. Work continued at the jobsite that day. On 17 February, early in the morning, approximately 20 ironworkers arrived at the jobsite. An agreement was reached permitting members of the Laborers to unload the box truss delivered that morning before the Employer shut down the job. According to Iron Workers business agent Chidester, he was informed by one of his members after the fact that the ironworkers had stopped the work; it does not appear that any business agents from either the Laborers or the Iron Workers were physically present that day on the site.

On 20 February, a meeting was held among the Employer's superintendent Wittling and vice president Morse, Iron Workers business agent Chidester, and Laborers business manager Hamilton, field representative Carlisle, and district council state representative Faulkenberg. Chidester claimed that the work being performed by members of the Laborers was work belonging to Iron Workers and a discussion ensued as to who was entitled to perform the work. In the course of the meeting, it was agreed that the Laborers-represented employees should be permitted to return to work. According

to the testimony of Wittling, Morse, and Hamilton, Chidester stated that on the Laborers return to work, he would do everything he could to prevent any violence or problems, but that he could make no guarantee because he did not have complete control over his members and that there was the possibility that there would be problems because of the high percentage of unemployment among his membership. Morse further testified that Chidester stated at this meeting that he was in no position to tell his membership to stop causing problems at the Employer's jobsite. According to Chidester, at this meeting he stated that the reason there were problems now was because 80 percent of his membership was unemployed, but he informed the Laborers and the Employer that he thought he had a pretty good hand on controlling his membership.

The record further reveals that on the morning of 20 February, prior to the meeting between the Employer, the Laborers, and the Iron Workers, a group of Iron Workers-represented employees again appeared at the jobsite. They were, however, dispersed by Chidester without incident, and did not return thereafter.

Work resumed on 21 February. The Employer offered testimony that there was property damage of about \$4000 during the period from 16 to 20 February and that it incurred approximately \$12,000 in additional financing charges due to the work stoppage. No evidence was presented linking the property damage to members of the Iron Workers.

#### *B. Work in Dispute*

The work in dispute involves the installation of fences, guardrails, signs, and foundations on the Indiana Toll Road.<sup>2</sup>

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

The Employer and the Laborers appear to claim that the shut down of the jobsite on 17 February

<sup>2</sup> This is the description of the work in dispute as set forth in the notice of hearing. Although the parties initially stipulated that this description was accurate, during the course of the hearing the Iron Workers stated that at no time had it claimed the Laborers-represented work on guardrails unless those guardrails were placed on bridges, and that at no time had it claimed work involved in the installation of fences. Because of the manner in which we dispose of this case, we find it unnecessary to address this question.

and Chidester's statement that he could not guarantee that there would be no problems in the future if members of the Laborers performed the disputed work constitute violations of Section 8(b)(4)(D). Both indicate that the work in dispute should be assigned to employees represented by the Laborers. The Respondent takes the position that no 8(b)(4)(D) conduct occurred, emphasizing the fact that the events of 16 and 17 February were not sanctioned by a responsible official of the Iron Workers. Alternatively, the Respondent argues that consideration of the various factors favors an award to it.

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

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. We are not satisfied that such cause exists in this case.

The facts show only that a group of Iron Workers-represented employees appeared at the jobsite on the morning of 17 February and that the Employer shut down the job that day. It is uncontroverted that no responsible official of the Respondent was aware of the incident until after its occurrence. Moreover, although there is conflicting testimony regarding Chidester's alleged statements about his control over his membership, the record also reveals that Chidester successfully dispersed those Iron Workers-represented employees who appeared at the jobsite on 20 February. This undercuts both the testimony as to his lack of control over the membership and any theory that the Respondent sanctioned or ratified its members' actions on 17 February by allowing a recurrence thereafter. Under these circumstances, we hold that the record evidence does not support the necessary finding that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. As the Board is therefore without authority to determine this dispute, we shall quash the notice of hearing.

#### **ORDER**

The notice of hearing is quashed.