

**Carpenters District Council of Greater St. Louis  
and James T. Dooley, d/b/a Dooley Con-  
struction.** Case 14-CD-831

December 13, 1990

DECISION AND DETERMINATION OF  
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND DEVANEY

The charge in this Section 10(k) proceeding was filed on July 20, 1990, by the Employer, James T. Dooley, d/b/a Dooley Construction, alleging that the Respondent, Carpenters District Council of Greater St. Louis, the Union, 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 the Employer's employees. The hearing was held on August 15, 1990, before Hearing Officer Michael T. Jamison. Thereafter, the Employer filed a posthearing brief.

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

James T. Dooley, a sole proprietor doing business under the name Dooley Construction, is a construction industry general contractor having its principal place of business in Northbrook, Illinois. During the 12-month period ending July 31, 1990,<sup>1</sup> the Employer purchased and received goods, materials, and products valued in excess of \$50,000, which were transported to its principal place of business directly from points located outside the State of Illinois. The Employer is presently under contract to perform more than \$50,000 worth of services at locations 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 Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

*A. Background and Facts of Dispute*

On July 12, 1990, the Employer commenced work under a contract with the McDonnell Douglas Corporation for the installation of anechoic absorbers at McDonnell Douglas' St. Louis, Missouri facility. Anechoic absorbers are composed of specially treated foam rubber absorbing material and are attached to the

floors, walls, and ceilings of chambers used to perform various scientific tests. The anechoic absorbers increase the accuracy of scientific measurements taken in a test chamber by insulating the chamber from external vibration and noise. The test chamber that the Employer contracted to insulate will be used by McDonnell Douglas to test missile guidance systems pursuant to classified defense contracts between McDonnell Douglas and the U.S. Department of Defense. Because the test chamber is located in a secure area within the McDonnell Douglas facility, workers installing the anechoic absorbers must have security clearances. The Employer's contract with McDonnell Douglas specified that the work must be completed by the end of August 1990.

Dooley assigned the work of installing the anechoic absorbers to himself and three of his employees, one of whom was Dooley's son. Dooley and his son are members of Local 58, Chicago District Council of Carpenters; a third employee is a member of Carpenters Local 250, also located in Illinois; and the fourth, a laborer, is not a member of any labor organization. The actual installation work is performed by Dooley, his son, and the other Carpenters member; the laborer only unpacks the material that the others install. The Employer does not have a contract with any labor organization.

Dooley testified that,<sup>2</sup> after he and his men began installing the anechoic absorbers on July 12, he was approached by a member of the Union working for another contractor at the McDonnell Douglas facility, who asked if Dooley "was union." Subsequently, this individual advised Dooley to call Union Business Agent Patrick Sweeney. Dooley placed the call that same day, and was asked by Sweeney whether he was a member of the Carpenters. Dooley advised Sweeney that he and his installers were members of Locals 58 and 250, briefly described the work he was doing, and, in response to Sweeney's inquiry, stated that he did not have a collective-bargaining agreement with the Union or with any Illinois affiliate of the Carpenters Union.

Sweeney then advised Dooley that he would have to come to the Union's district council hall and sign an agreement with the Union, after which he would be required to hire three union members to install the anechoic absorbers and could retain one of his employees as a supervisor. Dooley refused to displace his employees, stating that they had been with him a long time and that the work was specialty work which the Union's members would not know how to perform.

Sweeney subsequently requested a face-to-face meeting at the McDonnell Douglas construction gate at 2 p.m. on July 12. At that meeting, Sweeney again demanded that Dooley sign an agreement with the Union

<sup>1</sup>All dates are in 1990.

<sup>2</sup>Dooley was the only witness who testified at the hearing.

and Dooley again refused. During the course of this conversation, McDonnell Douglas representative Mike Wellman approached Dooley and Sweeney and asked Sweeney if he intended to cause Dooley any problems or to stop the job. Sweeney replied that he had said nothing about stopping the job or pickets, that Wellman should not put words in his mouth, that the Union's dispute was with Dooley and not with McDonnell Douglas and that Sweeney intended to file internal union charges against Dooley. Wellman subsequently denied Sweeney's request to inspect the Dooley site for the purpose of determining whether the Dooley employees had indeed left the premises.

On Friday, July 13, at approximately 11 a.m., Dooley observed a picket at McDonnell Douglas' main employee entrance. Dooley was not able to read the picket sign at the time, but testified that the picketer had an umbrella with "District Council of St. Louis" written on it. On Dooley's arrival at the jobsite, McDonnell Douglas representative Wellman immediately advised Dooley that the picket was disrupting the Company's operations and that McDonnell Douglas could not have pickets. Dooley then pulled his men from the job. In subsequent telephone conversations, Sweeney repeated his demand that Dooley sign an agreement with the Union, and Dooley again stated that he would not terminate his employees and hire members of the Union as the proposed agreement would have required.

Dooley testified that the picketing continued the next Monday, July 16, and that the picketer carried a sign stating "Information. Dooley Construction does not have a contract with Carpenters District Council of Greater St. Louis." The picketing ended on July 16, after Dooley again advised Sweeney that his men were no longer at the site. Although Dooley was subsequently allowed to complete the installation work without further picketing, Sweeney filed internal union charges against Dooley. A hearing was held on those charges on July 31, at which Dooley was advised that he could either sign an agreement with the Union, which would allow him to use one of his employees together with three union members, or he could sign an International agreement, which would only require that he hire two union members.

#### B. *Work in Dispute*

The disputed work consists of all work related to the installation of anechoic absorbers at the Employer's McDonnell Douglas, St. Louis, Missouri jobsite.

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

The Employer contends that there is reasonable cause to believe that the Union violated Section 8(b)(4)(D) of the Act by picketing for the purpose of forcing the assignment of the installation work to em-

ployees represented by the Union. The Employer notes that the parties stipulated that there is no agreed-on method to voluntarily resolve this dispute. On the merits, the Employer contends that the work should be awarded to its unrepresented employees and not employees represented by the Union on the basis of employer preference and past practice, economy and efficiency of operations, and the specialized nature of the skills involved.

The Union contends that there is no reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. Although the Union did not file a brief, it took the position at the hearing that the Union's only object was to cause the Employer to enter into a collective-bargaining agreement, that the Union did not claim the work involved, and that its picketing was for the purpose of advising the public that the Employer did not have a contract with the Union. According to the Union, this case at best raises issues under Section 8(b)(7)(C) of the Act, but that no violation of that provision has occurred inasmuch as the Union only picketed for 1-1/2 days.

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

Before the Board may proceed with a determination of the 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 and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

As set forth above, on July 13, the Union's business agent informed Dooley that he could not use his own employees to install anechoic absorbers at the McDonnell Douglas facility and demanded that Dooley sign a collective-bargaining agreement, one clause of which would have required Dooley to use individuals who were represented by the Union instead of his current employees to perform the installation work. When Dooley refused to comply, the Union began picketing outside the main entrance to the McDonnell Douglas facility.

We find that there is reasonable cause to believe that one purpose of the Union's picketing was to force the Employer to assign the installation work to individuals who were represented by the Union.<sup>3</sup> The Union's claim that it did not violate Section 8(b)(4)(D) because its picketing was solely for recognition purposes is without merit. We find no evidence in the record to suggest that the Union sought to represent the employees of the Employer who were performing the installation work at the time the dispute arose; rather, it appears that the Union sought to have some or all of those employees displaced in favor of employees rep-

<sup>3</sup> Accordingly, we need not pass on the Employer's contention that the filing of internal union charges, prior to any Board determination, constituted coercion within the meaning of Sec. 8(b)(4).

resented by the Union. See *Directors Guild (Universal Studios)*, 276 NLRB 626 (1985). As further evidence that the picketing was not for recognitional purposes, we note that the Union's picket was stationed at the main entrance to the McDonnell Douglas facility, which is used by McDonnell Douglas employees, rather than the construction entrance used by employees of the Employer.

We also find without merit the Union's claim that no jurisdictional dispute exists because the Union sought to enter into a collective-bargaining agreement with the Employer and the assignment of work to employees it represents would have been merely a consequence of the Employer's agreement to the contract terms. The Board has held that a jurisdictional dispute exists, within the meaning of Sections 8(b)(4)(D) and 10(k), when a union pickets for the purpose of obtaining an employer's agreement to a contract that assigns to employees represented by that union work already assigned to other employees at the time of the contract demand and picketing. *Operating Engineers Local 825 (Building Contractors Assn.)*, 118 NLRB 978, 983-984 (1957).

The Union also claims that no jurisdictional dispute exists because the picketing was for the purpose of advising the public that the Employer did not have a contract with the Union. We find no merit to this contention. Even assuming, arguendo, that the picketing had an informational objective, it is well settled that, as long as one object of picketing is to force an employer to assign particular work to employees represented by a union, rather than to the employer's employees, the picketing comes within the scope of Section 8(b)(4)(D). *Millwrights Local 1026 (Intercounty Construction)*, 266 NLRB 1049, 1051-1052 (1983). See also *Teamsters Local 50 (Schnabel Foundation)*, 295 NLRB 68 (1989). As indicated above, we have found that the Union's picketing had such an object. Finally, the parties stipulated at the hearing that there is no agreed-on method for voluntary resolution of the dispute.

Based on the foregoing, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-on 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 of 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 agreements

The parties have stipulated that there is no collective-bargaining agreement provision, Board certification, or arbitration decision awarding the disputed work.

We find that this factor does not favor an award of the work to either group of employees.

#### 2. Employer preference and past practice

The Employer prefers to use its own employees to install anechoic absorbers. Dooley, who as noted above was the only witness at the hearing, testified that he has installed anechoic absorbers in McDonnell Douglas test chambers since 1972 or 1974, and that he has always assigned the work to his own employees. Dooley further testified that, when he installs anechoic absorbers in the Chicago area, the Chicago area Carpenters Union does not claim the work. Although Dooley testified that there are approximately five other anechoic absorber installers nationwide, no evidence was presented concerning their work assignment practices.

We find that the factors of employer preference and past practice favor an award of the work to the Employer's employees.

#### 3. Relative skills

Dooley testified that only five employers install anechoic absorbers nationwide and that the work requires special skills and experience not possessed by most employees represented by the Union. In this regard, Dooley testified that he had received special training from an anechoic absorber manufacturer in the techniques and equipment used to properly align the materials within the narrow tolerances required. Dooley further testified that this work requires different tools and techniques than are used in other installation work and that a new employee requires 3 to 4 months of close supervision before he can work independently in this area. Finally, Dooley testified that a Chicago-area Carpenters official indicated that he could not supply qualified workers for this type of installation work and that the Union's business agent did not appear to understand what the work involved. Accordingly, we find that the factor of relative skills favors an award of the disputed work to the Employer's employees.

#### 4. Economy and efficiency of operations

Dooley testified that his employees were all experienced in the installation of anechoic absorbers and, as

stated above, that a new employee would require close supervision during his or her first few months on the job. Further, Dooley testified that, because the work is performed in a sensitive area, access is limited to individuals holding proper security clearances. While all of Dooley's employees have the required clearances, Dooley testified that it takes approximately 1 month to process the paperwork for security clearances for new employees.<sup>4</sup> Accordingly, we find that the efficiency factor favors an award of the disputed work to the Employer's employees.

#### Conclusion

After considering all of the relevant factors, we conclude that the Employer's unrepresented employees are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference and past practice, relative skills, and economy and efficiency of operations. This determination is limited to the controversy that gave rise to this proceeding.<sup>5</sup>

<sup>4</sup>We note that Dooley testified that Sweeney had stated to him that security clearances could be obtained in as little as 1 hour. However, Dooley also stated that in his experience this was not possible, and the Union introduced no evidence to rebut this testimony.

<sup>5</sup>In its posthearing brief, the Employer requests that we order the Union to cease all internal union disciplinary proceedings against Dooley arising out of

#### DETERMINATION OF DISPUTE

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

1. The unrepresented employees of James T. Dooley, d/b/a Dooley Construction are entitled to perform all work related to the installation of anechoic absorbers at the Employer's McDonnell Douglas, St. Louis, Missouri jobsite.

2. Carpenters District Council of Greater St. Louis is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force James T. Dooley, d/b/a Dooley Construction to assign the disputed work to employees represented by it.

3. Within 14 days from this date, Carpenters District Council of Greater St. Louis shall notify the Regional Director for Region 14 in writing whether it will refrain from forcing the Employer, by means prohibited by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

\_\_\_\_\_ this dispute. In view of our finding that reasonable cause exists to believe that the Union violated Sec. 8(b)(4)(D) based on its picketing, and since it is not the Board's function in a 10(k) proceeding to determine whether a violation has actually occurred, we decline the Employer's request.