

Laborers Local 309, Laborers International Union of North America, AFL-CIO and Crawford Heating and Cooling Company, Inc. and Sheet Metal Workers Local Union No. 91, Sheet Metal Workers International Association, AFL-CIO. Case 33-CD-351

February 14, 1991

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

The charge in this Section 10(k) proceeding was filed on October 15, 1990, by the Employer, Crawford Heating and Cooling Company, Inc., alleging that the Respondent, Laborers Local 309, Laborers International Union of North America, AFL-CIO (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 Sheet Metal Workers Local Union No. 91, Sheet Metal Workers International Association, AFL-CIO (Sheet Metal Workers). The hearing was held on November 2, 1990, before Hearing Officer D. Bruce Hill.

The Employer and a representative of the party in interest, Sheet Metal Workers' business agent and recording secretary, John Churuvia, were present at the hearing. The Laborers declined to participate in the hearing.

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 Employer is an Illinois corporation engaged in the business of installing heating and air-conditioning systems, ventilation systems, and other sheet metal contracting. During the 12-month period ending November 2, 1990, the Employer purchased and caused to be delivered to its jobsites within the State of Illinois goods and/or materials valued in excess of \$50,000 directly from points located outside the State of Illinois. During the same period, the Employer also performed services valued in excess of \$50,000 for customers located outside the State of Illinois. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Sheet Metal Workers and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer has a subcontract with a general contractor to remove the existing roof and to install a copper roof on the Denkmann Library at Augustana College in Rock Island, Illinois. The Employer began the roofing project about October 9, 1990.¹ The Employer assigned the roofing work to its employees represented by the Sheet Metal Workers. The Employer subcontracted the carpentry work on the job to Larsen and Company, who used its own employees for the carpentry work.

James Maynard, the Employer's vice president, testified that on Friday, October 12, he received a call from the Employer's foreman, Dollins, who informed Maynard that Laborers Business Agent Downs was at the worksite claiming the roofing work belonged to the Laborers and not to the Sheet Metal Workers. According to Maynard, he then spoke to Downs, who told him that the roofing work historically belonged to the Laborers. Maynard suggested Downs speak to Sheet Metal Workers Business Agent Churuvia concerning the jurisdictional dispute. Downs responded he had no intention of talking to Churuvia and that if Maynard did not have the Laborers doing the work by Monday, October 15, the Laborers would picket the worksite.

The sheet metal workers performed the work on October 15 and 16. On October 15 and 16, the laborers picketed the worksite, carrying picket signs which read, "Notice to the public, Crawford does not have contract with Laborers Local 309, and does not employ members of Local 309. This is not a request for any member or employer to stop doing business with this employer." Maynard testified that employees on the jobsite represented by the Pipefitters Union, the Carpenters Union, and the Bricklayers Union refused to cross the picket line, but employees represented by the Sheet Metal Workers continued to work.

B. Work in Dispute

The disputed work involves the removal of an existing roof in preparation for the installation of a new copper roof on the Denkmann Library at Augustana College in Rock Island, Illinois.

C. Contentions of the Parties

The Employer contends that its decision to assign the work to employees represented by the Sheet Metal Workers should be upheld and the work should be awarded to those employees on the basis of the Employer's collective-bargaining agreement with the Sheet Metal Workers, the Employer's preference and past practice, area practice, economy and efficiency of

¹ Unless otherwise noted, all subsequent dates are in 1990.

the operations, relative skills, and safety considerations.

The Laborers have not advanced any contentions in this proceeding.²

D. *Applicability of the Statute*

Before the Board may proceed with a determination of 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 voluntary resolution of the dispute.

The record shows that on October 12, 1990, Laborers Business Agent Downs claimed the disputed work and threatened to engage in picketing to force the Employer to reassign the work to employees represented by the Laborers. On October 15 and 16, the sheet metal workers performed the work and the laborers picketed the Employer's worksite with signs stating that the Employer did not employ members of Laborers Local 309. This picketing caused employees represented by other unions not to cross the picket line. We find reasonable cause to believe that the Laborers' picketing was designed to coerce the Employer to reassign the disputed work to employees represented by the Laborers.

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 agreements

Neither the Sheet Metal Workers nor the Laborers has been certified by the Board as the collective-bargaining representative of the Employer's employees. The Employer and the Sheet Metal Workers are parties to a collective-bargaining agreement, effective from

June 6, 1990, to May 31, 1993. This contract covers the performance of the work in dispute.

Maynard testified that since he has been employed by the Employer it has always had a collective-bargaining agreement with the Sheet Metal Workers and never has had a contract with the Laborers.

Accordingly, we find that the factor of collective-bargaining agreements favors an assignment of the disputed work to employees represented by the Sheet Metal Workers.

2. Employer preference and past practice

It is the Employer's preference to use only employees represented by the Sheet Metal Workers for the performance of the disputed work. Maynard testified his decision to use the Employer's own employees represented by the Sheet Metal Workers was based on the collective-bargaining agreement between the Employer and the Sheet Metal Workers, the Sheet Metal Workers' constitution (which sets forth the Sheet Metal Workers' right to perform the disputed work), and his familiarity with the Sheet Metal Workers-represented employees' work. The Employer has always used employees represented by the Sheet Metal Workers to remove or install roofing materials.

In contrast, the Employer is not familiar with the work of employees represented by the Laborers since it has never had a collective-bargaining agreement with the Laborers and has never employed laborers to remove and install roofing material.

Accordingly, we find the factor of the Employer's preference and past practice favors assigning the disputed work to employees represented by the Sheet Metal Workers.

3. Area and industry practice

Sheet Metal Workers Business Agent Churuvia testified that in his 14-year experience as a journeyman employees represented by the Sheet Metal Workers have been involved in the removal and installation of metal roofs on approximately 75–100 jobs within the geographic jurisdiction of the Sheet Metal Workers. Further, Maynard testified that his competitors also used employees represented by the Sheet Metal Workers to remove and install metal roofs.

The record contains no evidence that employees represented by the Laborers have performed this kind of work in the area. Accordingly, the factor of area practice favors assigning the disputed work to employees represented by the Sheet Metal Workers.

4. Relative skills

Maynard testified that employees represented by the Sheet Metal Workers possess the particular skills and ability necessary to perform the disputed work. In con-

² The Laborers did not file a brief.

trast, the Employer does not have any knowledge of the laborers' skills.

Maynard testified that the employees represented by the Sheet Metal Workers receive extensive training regarding safety measures. He testified that safety is a special concern because the employees work approximately 40–50 feet above the ground and they must remove the roofing material so as not to injure themselves or individuals on the ground. Churuvia testified that employees represented by the Sheet Metal Workers have a “very adequate” safety record due to that Union’s 4-year apprenticeship program, which extensively trains employees in all aspects of the sheet metal industry.

There is no evidence concerning the skills of the Laborers-represented employees. Accordingly, this factor favors assigning the disputed work to employees represented by the Sheet Metal Workers.

5. Economy and efficiency of operations

Maynard testified that it was more economical to assign the disputed work to employees represented by the Sheet Metal Workers because it was his experience that these employees are sometimes able to salvage old roofing materials and thereby reduce costs. Maynard also testified that the rate of the removal process of the old roof was important because the carpentry subcontractor’s employees must follow directly behind the Employer’s employees to install the roofing sub-base to ensure waterproofing. Maynard testified that the employees represented by the Sheet Metal Workers exercise sound judgment concerning which of the old roofing materials should be removed, and how the sub-roofing should be installed.

Because the record does not show that laborers could perform the disputed work as efficiently, we find that this factor favors an assignment to employees represented by the Sheet Metal Workers.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Sheet Metal Workers Union Local No. 91, Sheet Metal Workers International Association, AFL–CIO are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement, the Employer’s preference and past practice, area practice, relative skills, and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by Sheet Metal Workers Union Local No. 91, Sheet Metal Workers International Association, AFL–CIO, 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 Crawford Heating and Cooling Company, Inc., represented by Sheet Metal Workers Union Local No. 91, Sheet Metal Workers International Association, AFL–CIO are entitled to perform the removal of an existing roof in preparation for the installation of a new copper roof at the Denkman Library at Augustana College in Rock Island, Illinois.

2. Laborers Local 309, 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 Crawford Heating and Cooling Company, Inc., to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Laborers Local 309, Laborers International Union of North America, AFL–CIO shall notify the Regional Director for Region 33 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.