

**International Brotherhood of Electrical Workers,  
Local 103 and Sylvania Lighting Services Corp.  
and International Brotherhood of Electrical  
Workers, Local 1499.** Case 1-CD-883

January 17, 1991

DECISION AND DETERMINATION OF  
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

The charge in this Section 10(k) proceeding was filed on July 6, 1990,<sup>1</sup> by the Employer, alleging that the Respondent, Electrical Workers Local 103, 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 Electrical Workers Local 1499. The hearing was held on August 2, 1990, before Hearing Officer Radine Legum.

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 Delaware corporation, is engaged in the business of lighting maintenance with an office and place of business in Woburn, Massachusetts. It annually purchases and receives goods and materials at its Woburn facility valued in excess of \$50,000 directly from suppliers outside the Commonwealth of Massachusetts. In addition, the Employer furnishes services in excess of \$50,000 to customers located outside the Commonwealth of Massachusetts. 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 Local 103 and Local 1499 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

*A. Background and Facts of Dispute*

Local 1499 and the Employer have had a collective-bargaining relationship for more than 16 years. Their current collective-bargaining agreement is effective from February 2, 1990, through February 1, 1993. Employees represented by Local 1499 who work for the Employer perform lighting maintenance work consisting of washing, cleaning, and replacing lighting fixtures and replacing bulbs, ballasts, and sockets.

In May 1990, the Employer began a job using employees represented by Local 1499 at the Wonderland Dog Track, requiring the washing, rebulbing, and ballast<sup>2</sup> replacement of approximately 1200 fixtures, and the washing and rebulbing of approximately 600 additional fixtures. Shortly after the job began, Local 103 Business Agent Frank Nigro came to the jobsite. He spoke to the Wonderland facilities manager, Henry Trifone, and informed Trifone that there was a dispute concerning which local union, Local 103 or Local 1499, had jurisdiction over the Employer's work. Nigro also called Wonderland's general manager, Dalton, to inform him of the jurisdictional dispute. Nigro testified that he told Dalton that the work should go to Local 103.

Thereafter, the Employer's branch manager, Richard Cohee, received a telephone call from Trifone. Cohee learned that Trifone had instructed the Employer's employees at Wonderland to stop working. Trifone said that the Employer was not to do any more work at Wonderland until the dispute between the two locals was resolved; otherwise there would be a picket line.

John Carleton, the Employer's manager of human resources, testified that after being called by Cohee about this matter he spoke with Trifone. Trifone said that Nigro had told him that Local 103 would picket if Local 1499 continued working. Carleton further testified that he called Nigro, who said that the work was Local 103's work and that Local 103 would put up an informational picket line. Nigro testified that he told Carleton that it was Local 103's work under IBEW guidelines and that the International's procedures were available to resolve the matter.

Carleton wrote a letter to IBEW International Vice President John Flynn, asking Flynn to look into this matter. On May 24, at Flynn's suggestion, a meeting was held that included Carleton, Local 1499 Assistant Business Agent Malone, Nigro, and IBEW International Representative Monahan. According to Carleton, during this meeting Nigro reiterated that the work was Local 103's throughout Boston and said that he could put pickets anywhere. Carleton also testified that Nigro said that he could "have pregnant women out there" on the picket line and it would "be very noisy." On cross-examination, Carleton testified that at one point in the meeting Nigro said to Carleton, "I have never mentioned a picket line." Carleton further testified that in response to a question from International Representative Monahan, Nigro said, "I'm not going to picket, it's an informational line, and I know the difference," and that Nigro then laughed. At the hearing, Nigro denied ever using the term "picket." Nigro testified that instead he told Carleton he would inform the public that the Employer did not pay community standard or prevailing wages. Nigro further tes-

<sup>1</sup>All dates hereafter are 1990 unless otherwise indicated.

<sup>2</sup>Ballasts transform power so that a fluorescent tube will light.

tified that “picket” was Carleton’s word. Nigro asserted that during the May 24 meeting he claimed the work for Local 103 to Monahan, not to any employer representative.

No agreement was reached among the participants at the May 24 meeting. On May 30, International Vice President Flynn issued a memorandum to Local 1499 and Local 103, ruling that the “retrofit lighting” work at Wonderland was within the jurisdiction of the Union’s inside branch and thus was Local 103’s work. Local 1499 appealed Flynn’s decision to International President Barry. As of the date of the hearing Barry had not ruled on the appeal.

#### B. *Work in Dispute*

The disputed work involves lighting fixture and ballast replacement at Wonderland Dog Track, Wonderland Park, Revere, Massachusetts, or at any other site within the geographical jurisdiction of the Electrical Workers Local 103, and the cleaning of the lenses and fixtures incidental to such tasks.<sup>3</sup>

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

The Employer contends that all the relevant factors support an award of the disputed work to its own Local 1499-represented employees. It especially relies on its current collective-bargaining agreement with Local 1499, as well as its longstanding practice of performing the work with those employees. The Employer argues that the International approved its current contract with Local 1499 covering the work in dispute. The Employer further asserts that it is not bound by any internal union dispute-resolution mechanism.

Local 103 contends that this dispute is an internal union dispute between two IBEW locals and that, based on Flynn’s decision, the work is Local 103’s. Local 103 also made a motion to quash 10(k) hearing. It claims that because the Employer contacted the International and went to meetings with the two unions and representatives of the International it voluntarily submitted resolution of the matter to the International. If the motion is not granted, Local 103 argues that an award of the work to its members is warranted by all factors; it especially emphasizes its members’ skills

<sup>3</sup> At the hearing, the hearing officer proposed as a stipulation a description of the disputed work like that set out above, with the omission of any reference to cleaning. That is the way the work was set forth in the notice of hearing. Counsel for Local 103 rejected the proposed stipulation and stated, “Local 103 is claiming that work, that will come under the auspices of retrofit work, that being when there is a complete overhaul beyond what we consider maintenance and service of a lighting system.” The Employer’s counsel and that of Local 1499 then referred to the scope of the work clause in a collective-bargaining agreement with Local 1499 as their description of the disputed work. That clause defines the scope of the work as including the cleaning, maintenance, and/or replacement of lighting fixtures. Later in the hearing there was testimony that the work could involve the cleaning of the lenses and fixtures. Therefore, we find that the disputed work includes cleaning the lenses and fixtures.

and experience and the licensing requirements of the Commonwealth of Massachusetts.<sup>4</sup>

Local 1499 contends that the Employer’s employees it represents should perform the work; it bases its contention on its long bargaining history with the Employer and the current collective-bargaining agreement that the International approved. Local 1499 additionally asserts that the proper forum for resolution of this dispute is the internal IBEW procedures.

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

John Carleton, the Employer’s manager of human resources, testified that he was told by Wonderland Facilities Manager Trifone that Local 103’s business agent, Nigro, had said that Local 103 would picket if Local 1499 kept working. Carleton also testified that Nigro told him directly that the work belonged to Local 103, that Nigro had made reference to picketing, and that Nigro had said he could have pregnant women and others who would be “very noisy” out at Wonderland.<sup>5</sup> Carleton also testified that the Employer never agreed to be bound by the Union’s determination.<sup>6</sup> Neither Local 1499 nor Local 103 has relinquished its claim to the work.

In these circumstances 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 deny Local 103’s motion to quash 10(k) hearing, and 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).

<sup>4</sup> Local 103 raises an additional contention, claiming that Sylvania was not the Employer in control of the work. It apparently means by this that another company, EUA Cogenex, chose Sylvania to do the work that gave rise to this dispute. Local 103 does not, however, contend that Sylvania lacked day-to-day control of the job. Therefore, we reject Local 103’s argument. We also reject Local 103’s argument that EUA Cogenex should have been at the hearing because there is no evidence that it was in day-to-day control of the work.

<sup>5</sup> We are aware that this conflicts with Nigro’s testimony. However, in 10(k) proceedings, a conflict in testimony does not prevent the Board from finding “reasonable cause” and proceeding with a determination of the dispute. *Sheet Metal Workers Local 107 (Lathrop Co.)*, 276 NLRB 1200, 1202 (1985), citing *Laborers Local 334 (C. H. Heist Corp.)*, 175 NLRB 608, 609 (1969).

<sup>6</sup> Unless all necessary parties are bound to the method for voluntary adjustment of the dispute, the method does not bar a Board determination. *Iron Workers Local 301 (Spancrete Northeast)*, 235 NLRB 1222, 1224 (1978).

The following factors are relevant in making the determination of the dispute.

#### 1. Certifications and collective-bargaining agreement

There are no certifications in this case. Local 1499 has a contract with the Employer which defines the scope of the work “performed by the employees” as including “maintenance or replacement of lighting fixtures . . . ballasts . . . lenses.” Local 103 does not have a collective-bargaining agreement with the Employer. Therefore, this factor favors an award of the disputed work to employees represented by Local 1499.

#### 2. Company preference and past practice

The Company prefers that employees represented by Local 1499 perform the disputed work and has assigned them the work. The Employer has at least a 16-year history of assigning Local 1499 lighting maintenance work. Therefore, company preference and past practice weigh in favor of assigning the disputed work to the employees represented by Local 1499.

#### 3. Area and industry practice

In attempting to show an area and industry practice favoring it, Local 103 gave numerous examples of companies who had signed its contract. Most signatories to Local 103’s contract do whatever electrical work is required in the course of construction, which can include light fixture work. However, no examples were given of employees represented by Local 103 who perform full-time work of the type in dispute. Further, none of the signatories to Local 103’s contract do lighting maintenance work full time. While this evidence may show that Local 103 is chosen for general electrical work, it does not show an area or industry practice regarding the specific type of electrical work at issue here.

The examples of work of the type in dispute done by Local 1499 were almost entirely jobs done for a single employer, Sylvania. While Sylvania uses employees represented by Local 1499, this does not establish an area or industry practice. Thus, this factor favors neither Union.

#### 4. Relative skills

The work which gave rise to this dispute, retrofitting lighting fixtures, does not require much skill. A demonstration at the hearing showed that retrofitting a lighting fixture is a simple, step-by-step process. It involves turning the power off, taking the lens or plastic cover off the lamp, taking the ballast pan off, disconnecting the wiring, taking out the ballasts, putting

in new ballasts,<sup>7</sup> connecting the wiring, putting the ballast pan back on, putting bulbs in, and putting the lens back onto the lamp. It could also involve cleaning the fixture and the lens.

Cross-examination of the employee represented by Local 1499 who performed the demonstration revealed that he did not know what voltage was present on the load side of the ballast. Theoretical understanding is not required, however, for the performance of the work. There was testimony that a person can be trained to do the work in 1 day and that the primary determinant of speed in performing the work is manual dexterity. Even assuming that Local 103 showed that the employees it represented generally were better electricians, it has not shown that the work requires great skill or that employees represented by Local 1499 do not have the necessary skill to perform it.

Local 103 also questions the legality of certain aspects of the procedures utilized by employees represented by Local 1499. It was uncontested, however, that Local 1499 can supply licensed electricians. Therefore, this factor favors neither Union’s claim to the work.

#### 5. Economy and efficiency of operations

During the hearing, Local 103 Representative Frank Nigro acknowledged that employees represented by Local 1499 could go into buildings and clean the lenses and fixtures. He also stated that two representatives of the International had said that Local 1499 had jurisdiction over changing bulbs and washing. The Employer argued therefore that use of Local 1499-represented employees for the maintenance and retrofitting of fixtures meant that only one of the competing groups of employees would be required to do all the disputed work. Because Local 1499 could do all the work in dispute and Local 103 appears now to claim only part of the work, we find that the use of employees represented by Local 1499 would be more efficient.<sup>8</sup> Therefore, this factor favors an award of the disputed work to employees represented by Local 1499.

#### 6. Past assignments and awards by private parties

As noted above, IBEW Vice President John Flynn ruled that the “retrofit lighting” work at Wonderland was Local 103’s work. Although Local 1499 has appealed Flynn’s decision to International President Barry, Flynn’s award weighs slightly in favor of an award of the disputed work to employees represented

<sup>7</sup>As a result of technological innovation, the fixture used in the demonstration included only one replacement ballast.

<sup>8</sup>At the time Local 103 demanded the disputed work, it gave no indication that it was not seeking to clean the lenses and fixtures if that were part of the work. In any event, even if the disputed work does not include such cleaning tasks, we would still find that it would be more efficient to assign the disputed work to Local 1499 for the reasons stated above.

by Local 103, albeit that award does not mention the cleaning and washing of the lenses and fixtures.

#### 7. Safety

Local 103 presented evidence that the employees represented by it are licensed electricians who have been through an apprenticeship program and argues they can more safely perform electrical work. Local 1499 presented testimony from one of the electricians it represents. He testified that he had worked with Sylvania for 2 years without incident and was not aware of any unsafe incidents occurring among fellow Sylvania employees during the performance of work similar to that in dispute. Therefore, the evidence presented on the issue of safety is not sufficient to favor the claims of either Local 103 or 1499.

#### Conclusions

After considering all the relevant factors, we conclude that employees represented by Electrical Workers Local 1499 are entitled to perform the work in dispute. We reach this conclusion relying particularly on the collective-bargaining agreement, Employer preference and past practice, and efficiency.

In making this determination, we are awarding the work to employees represented by Electrical Workers Local 1499, not to that Union or its members. The de-

termination is limited to the work in dispute done by the Employer within the geographical jurisdiction of Electrical Workers Local 103.

#### DETERMINATION OF DISPUTE

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

1. Employees of Sylvania Lighting Services Corp. represented by the International Brotherhood of Electrical Workers, Local 1499 are entitled to perform lighting fixture and ballast replacement at Wonderland Dog Track, Wonderland Park, Revere, Massachusetts, or at any other site within the geographical jurisdiction of the International Brotherhood of Electrical Workers, Local 103, and the cleaning of the lenses and fixtures incidental to those tasks.

2. International Brotherhood of Electrical Workers, Local 103 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Sylvania Lighting Services Corp. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Local 103 shall notify the Regional Director for Region 1 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.