

Laborers' International Union of North America, Laborers' District Council of Western Pennsylvania and Construction General Laborers and Material Handlers Local No. 964, AFL-CIO and Eastern Steel Constructors, Inc. and Iron Workers, Local 3, AFL-CIO and Iron Workers, Local No. 207, AFL-CIO and Iron Workers, Local No. 787, AFL-CIO. Case 6-CD-882

March 28, 1991

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The charge in this 10(k) proceeding was filed on November 20, 1990, and an amended charge was filed on November 27, 1990, by the Employer, alleging that the Respondent Laborers' International Union of North America, Laborers' District Council of Western Pennsylvania and Construction General Laborers and Material Handlers, Local 964, AFL-CIO (Laborers) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with the object of forcing the Employer to assign certain work to employees it represents rather than to the employees represented by International Association of Bridge, Structural and Ornamental Iron Workers, Local 3, Local No. 207, and Local No. 787, AFL-CIO (Iron Workers).¹ The hearing was held December 14, 1990, before Hearing officer Stephanie E. Brown.

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, Eastern Steel Constructors, Inc., a Maryland corporation with office and principal place of business in Fallston, Maryland, is engaged in the installation of reinforcing bars and cables in concrete in the construction industry. During the past 12-month period prior to the hearing, it has performed services valued in excess of \$50,000 on jobsites located outside the State of Maryland. During the same 12-month period it purchased and received goods, materials, products, and services valued in excess of \$50,000 from suppliers located outside the State of Maryland. 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' International

¹The parties at the hearing agreed to refer to the International Association of Bridge, Structural and Ornamental Iron Workers, Local 3, Local 207, and Local 787 collectively as "Iron Workers" for the purpose of this proceeding.

Union of North America, Laborers District Council of Western Pennsylvania and Construction General Laborers and Material Handlers, Local 964, AFL-CIO, and Iron Workers Locals 3, 207, and 787 are labor organizations within the meaning of Section 2(5) of the Act.²

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer entered into a subcontract with Gust K. Newberg Construction Company, the general contractor of the Pennsylvania Turnpike/Beaver Valley Expressway. Eastern submitted a competitive bid and was awarded the subcontract to install the reinforcing steel on the bridges included in the project. Eastern assigned the work to employees represented by the Iron Workers, with whom it has a collective-bargaining agreement, and commenced working on the project on or about October 28, 1990.³

In November 1990, shortly after the work started, the Employer received a telephone call from Joseph Laquatro of the Laborers' District Council, as well as from a representative of Laborers Local 964, demanding that employees represented by the Laborers be assigned the work being done by the ironworkers. These representatives from the Laborers informed Eastern that if the laborers were not assigned the work, the Laborers would shut the job down. Eastern continued to assign the work to ironworkers, despite the demand and the threat from the Laborers.

On or about November 27, 1990, pickets from the Laborers appeared at the jobsite. Because there was a threat from the Laborers that the whole job would be shut down, the general contractor shut down Eastern in order to keep the project moving and Eastern was unable to work that day. After 1 day of picketing, the Laborers agreed to cease the picketing activity pending the outcome of the instant hearing.

B. *Work in Dispute*

The disputed work is installing reinforcing steel into concrete on bridges on section 44 of the Pennsylvania Turnpike/Beaver Valley Expressway in Lawrence County, Pennsylvania.

C. *Contentions of the Parties*

The Employer contends that on the basis of Eastern's collective-bargaining agreement, area and indus-

²The Laborers did not appear at the hearing nor was a brief submitted, thus its position regarding the disputed work was never stated.

³The Employer has a collective-bargaining agreement with the Iron Workers International dated September 25, 1985, which has not been terminated. According to the terms of the agreement, the Employer is bound to use ironworkers for its projects throughout the country. The Employer has no contract with the Laborers' International Union or with any local union of the Laborers' International.

try practice, company past practice, relevant skills, economy and efficiency of operations, and employer preference, the work should be awarded to the employees represented by the Iron Workers.

The Laborers did not appear at the hearing and therefore did not state any position regarding the disputed work. However, the Laborers has not withdrawn its demand for the disputed work nor the threat of further action in support of that demand.

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 voluntary adjustment of the dispute. Section 8(b)(4)(D) makes it an unfair labor practice to take coercive action with the object to “for[ce] or requir[e] any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another trade, craft, or class” In order to find reasonable cause to believe Section 8(b)(4)(D) has been violated, “there must be evidence that one group of employees has exerted improper pressure upon the Employer to compel it to assign certain work to that group of employees rather than to another group which also seeks work.” *Auto Workers Local 957 (General Motors)*, 239 NLRB 365, 366 (1978).

At the beginning of the dispute, employees represented by the Iron Workers had been assigned to perform the disputed work. The Laborers insisted that the work belongs to employees whom it represents and informed Eastern that if the laborers were not assigned the work, the Laborers would shut down the job. Accordingly, there are competing claims to the disputed work on behalf of rival employee groups. On or about November 27, 1990, the Laborers picketed the jobsite forcing the Employer’s operation to shut down for 1 day. Therefore, there is reasonable cause to believe that the Laborers used proscribed means to enforce the claim to the disputed work. There is no agreed-on method for voluntary resolution of the dispute to which all parties are bound.

Based on our findings above, 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 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 the dispute.

1. Certification and collective-bargaining agreements

There was no evidence presented that either labor organization has been certified by the Board as the collective-bargaining representative for any of the employees involved. Accordingly, this factor is not helpful in determining the dispute.

The Employer has a collective-bargaining agreement with the Iron Workers. According to the provisions of the agreement the Employer will use exclusively Iron Workers for all its projects throughout the country. The Employer is not a signatory to an agreement with the Laborers. We find that this factor favors an award of the work to the employees represented by the Iron Workers.

2. Employer preference and past practice

The Employer prefers to use the employees represented by the Iron Workers, and its past practice since 1978 has been to use ironworkers for installing reinforcing rods.

We find that the factor of employer preference and past practice favors an award to the employees represented by the Iron Workers.

3. Area practice

The Employer has been performing work in Western Pennsylvania since 1978, and has always used ironworkers for installing reinforcing rods. Eastern’s regional field manager, Gene Hall, testified that he had never seen laborers install reinforcing rods. Mike Sudzina, the business agent of the Iron Workers, in his testimony, identified a list of projects done by contractors in the last 5 years, within his local’s jurisdiction, where ironworkers were used. This factor favors an award of the disputed work to the employees represented by the Iron Workers.

4. Relative skills

Ironworkers must go through a special training process to learn how to install reinforced steel. According to Scott Striebinger, the Employer’s district project manager, he is not aware of any laborers who install reinforcing rods. Thus, this factor favors an award of the disputed work to the employees represented by the Iron Workers.

5. Economy and efficiency of operations

According to the testimony of Scott Striebinger, the Employer's district project manager, it is more economical and efficient for the Employer to use ironworkers because it can move its ironworkers from project to project throughout the area. Accordingly, we conclude the record establishes that the factors of efficiency and economy of operations favors awarding the work to the employees represented by the Iron Workers.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Iron Workers are entitled to perform the work in dispute. We reach this conclusion by relying on the factors of the Employer's collective-bargaining agreement with the Iron Workers, 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 the employees represented by the Iron Workers, not to the Unions or their 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 Eastern Steel Constructors, Inc., represented by the International Association of Bridge, Structural and Ornamental Iron Workers, Local 3, Local No. 207, and Local No. 787, are entitled to perform the work of installing reinforcing steel into concrete on bridges on section 44 of the Pennsylvania Turnpike/Beaver Valley Expressway, in Lawrence County, Pennsylvania.

2. Laborers' International Union of North America, Laborers' District Council of Western Pennsylvania and Construction General Laborers and Material Handlers, Local No. 964, AFL-CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force Eastern Steel Constructors, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Laborers' International Union of North America, Laborers' District Council of Western Pennsylvania and Construction General Laborers and Material Handlers, Local No. 964, AFL-CIO shall notify the Regional Director for Region 6 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the work in a manner inconsistent with this determination.