

Local 1575, International Longshoremen's Association, AFL-CIO and Puerto Rico Marine Management, Inc. and Local 402, Office and Professional Employees International Union, AFL-CIO. Case 24-CD-18

April 11, 1991

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

The charge in this Section 10(k) proceeding was filed October 10, 1990, by the Employer, Puerto Rico Marine Management, Inc. (PRMMI or the Company), alleging that the Respondent, Local 1575, International Longshoremen's Association, AFL-CIO (Local 1575 ILA), 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 Local 402, Office and Professional Employees International Union, AFL-CIO (Local 402 OPEIU). The hearing was held November 7 and 8, 1990, before Hearing Officer Stanley A. Orenstein.

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 providing marine transportation or related services between Puerto Rico and the mainland of the United States and in interstate and foreign commerce. It has its principal place of business in Elizabeth, New Jersey, and maintains other places of business and port facilities in the United States, including the Commonwealth of Puerto Rico. The Company annually derives gross revenues in excess of \$500,000 from the handling and transportation of cargo in interstate and foreign commerce in connection with its services as manager and operator of vessels and related facilities owned by Puerto Rico Maritime Shipping Authority, a public corporation, and provides and performs services valued in excess of \$50,000 for companies located outside the Commonwealth of Puerto Rico. 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 1575 ILA and Local 402 OPEIU are labor organizations within the meaning of Section 2(5) of the Act.

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II. THE DISPUTE

A. Background and Facts of Dispute

Prior to June 22, 1990, the work related to receiving, storing, and dispatching spare and replacement parts for PRMMI's vehicles and equipment was divided between two separate parts shops which were located in different areas of the same building. Four employees represented by Local 1575 ILA operated one shop, and one or two employees represented by Local 402 OPEIU operated the other. Each shop contained different types of spare and replacement parts.

On June 22, 1990, in an effort to cut costs and increase efficiency, PRMMI eliminated the shop operated by the OPEIU-represented employees and consolidated operations into the shop operated by the ILA-represented employees. The Employer assigned the work related to receiving, storing, and dispatching of spare and replacement parts to the employees represented by Local 1575 ILA and assigned the administrative functions related to the spare and replacement parts to the employees represented by Local 402 OPEIU. At present, a majority of the work performed in the parts shop is work that was formerly performed by the ILA-represented employees.

Prior to implementing its decision to consolidate the parts shops, PRMMI met with both Unions to discuss possible changes. On June 21, 1990, Guillermo Ortiz, the president of Local 1575 ILA, stated that the Union would strike, would not load and unload cargo from PRMMI's vessels, and the Union's mechanics would not go to the parts shop to pick up parts if PRMMI closed the shop where the ILA-represented employees were working or assigned the work they were performing to OPEIU-represented employees.

On June 25, 1990, Local 402 OPEIU filed a grievance pertaining to the Company's reorganization of the parts shops. Subsequently, Ortiz informed PRMMI that Local 1575 ILA would not honor any arbitration decision rendered as a result of the grievance filed by Local 402 OPEIU, would not agree to arbitrate under the Local 1575 ILA-PRMMI agreement, and would not participate in tripartite arbitration.

B. Work in Dispute

The disputed work concerns the work related to receiving, storing, and dispatching of spare and replacement parts. Although not included in the notice of hearing's description of the work in dispute, the record indicates that the work is located at the PRMMI parts shop in Puerto Nuevo, Puerto Rico.

C. Contentions of the Parties

The Employer contends that the disputed work should be assigned to the employees whom Local 1575 ILA represents based on the ILA collective-bargaining

agreement, PRMMI's preference, relative skills, efficiency, and company and industry practice. Local 1575 ILA agrees with the Employer's contention. Local 402 OPEIU contends that there is no bona fide jurisdictional dispute and, in the alternative, that the work in dispute should be assigned to the employees it represents based on its collective-bargaining agreement, past practice, skills, and efficiency.

D. *Applicability of the Statute*

As discussed above, on June 21, 1990, the president of Local 1575 ILA stated that the Union would strike, would not load and unload cargo from PRMMI's vessels, and the Union's mechanics would not go to the parts shop to pick up parts if PRMMI reassigned work being performed by ILA-represented employees to OPEIU-represented employees.

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.¹ 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

Neither Local 1575 ILA nor Local 402 OPEIU has been certified by the Board as representatives of PRMMI's employees. The Employer voluntarily recognized both Unions. The broad language of both Unions' collective-bargaining agreements arguably covers the work in dispute. This factor does not weigh in favor of awarding the work to either group of employees.

¹ We find no merit in the Intervenor OPEIU's contention that this is not a true jurisdictional dispute. As noted above, each union here has claimed the work on behalf of the employees of the Employer it represents. Thus, this case is unlike *Teamsters Local 107 (Safeway Stores)*, 134 NLRB 1320 (1961), in which the Board concluded that "the real dispute [was] wholly between Local 107 and Safeway," and concerned "only Local 107's attempt to retrieve the jobs of its members," who had been discharged when Safeway relocated certain work and terminated its bargaining relationship with Local 107.

2. Company preference and past practice

The Company's preference is to assign the work to the employees Local 1575 ILA represents. In the past, the work in Puerto Nuevo has been done by both groups of employees. The Employer's predominant practice, however, has been to assign the work to ILA-represented employees. PRMMI has operations in several other U.S. ports. At every other location, ILA-represented employees are the only workers performing the disputed work. There is one other OPEIU-represented employee, employed at a different port, and he performs the same function that the OPEIU-represented employee in the Puerto Rico parts shop is now performing. This factor weighs in favor of awarding the work to the employees Local 1575 ILA represents.

3. Industry practice

When asked what the practice in the industry is, PRMMI's director of labor relations phrased his answer in terms that do not make it clear whether he was referring to the practice throughout the industry or the Employer's own practice. Because the evidence is ambiguous, we find that this factor does not favor an award to one group over the other.

4. Relative skills

PRMMI asserts that because the majority of the parts presently being handled in the parts shop are parts that were previously handled by ILA-represented employees, they have greater relative skill in performing the work in dispute. We do not believe that evidence of familiarity establishes that one group of employees has greater relative skills.

5. Economy and efficiency of operations

The ILA-represented employees formerly performed what presently comprises a majority of the work performed in the parts shop. Therefore, they are more familiar with the handling of the parts and can perform the work more efficiently and economically than would OPEIU-represented employees who are familiar with the handling of only a small portion of the parts handled in the current operation. This factor weighs in favor of awarding the work to the employees Local 1575 ILA represents.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 1575 ILA are entitled to perform the work in dispute. We reach this conclusion relying on company preference, past practice, and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by Local 1575 ILA, 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.

Employees represented by Local 1575, International Longshoremen's Association, AFL-CIO, are entitled to perform the work related to receiving, storing, and dispatching of spare and replacement parts at the Puerto Rico Marine Management, Inc. parts shop in Puerto Nuevo, Puerto Rico.