

Glaziers, Architectural Metal and Glass Workers Local Union 27, Chicago and Vicinity of the International Brotherhood of Painters and Allied Trades, AFL-CIO and Harmon Contract W.S.A., Inc. and Shopmen's Local Union No. 473 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 13-CD-437

September 30, 1991

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed April 9, 1991, and amended April 12, 1991, by Harmon Contract W.S.A., Inc. (Harmon), alleging that the Respondent, Glaziers, Architectural Metal and Glass Workers Local Union 27, Chicago and Vicinity of the International Brotherhood of Painters and Allied Trades, AFL-CIO (Glaziers) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Harmon to assign certain work to employees it represents rather than to employees represented by Shopmen's Local Union No. 473 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Iron Workers). The hearing was held May 7 and June 5, 1991.

The National 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,¹ the Board makes the following findings.

I. JURISDICTION

Harmon, a Minnesota corporation, is engaged in the sale, production, and installation of aluminum, glass, and related accessories at its facility in St. Charles, Illinois. During the past calendar year, Harmon purchased and received goods and services valued in excess of \$50,000 from points located directly outside the State of Illinois. The parties stipulate, and we find, that Harmon is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Glaziers and Iron Workers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

In the spring of 1990, Harmon was awarded a contract to produce, manufacture, and install curtain wall²

¹We grant the Glaziers' unopposed motion to correct the transcript.

²A curtain wall is the glass exterior facade of a building.

at an office complex project for the Sears Merchandising Group in Hoffman Estates, Illinois. On February 1, 1991, the Employer opened an assembly plant in St. Charles, Illinois, to perform the assembling, sealing, and glazing of curtain wall components for the project.

Harmon's vice president, Dennis Flynn, testified that for the past 3 years, under its collective-bargaining agreement with the Iron Workers, Harmon has assigned the assembly, sealing, and glazing of project components at off-site facilities to employees represented by the Iron Workers and that, under its collective-bargaining agreement with the Glaziers, it has used employees represented by that union for the actual on-site installation of the completed curtain wall. Accordingly, Flynn assigned the assembling, sealing, and glazing work at the St. Charles facility to employees represented by the Iron Workers.

Beginning in February 1991, Flynn was approached by representatives of the Glaziers with regard to their possible participation on the project. The Glaziers' business representative, Bernard Spatz, testified that he told Flynn that the Glaziers expected the project to be manned by the employees it represents since the project was within the Glaziers' territorial jurisdiction. Flynn testified that he told Spatz that the work had been assigned to employees represented by the Iron Workers. According to Spatz, Flynn never told him that the employees who had been assigned the work were represented by another union. Following their initial conversation, Flynn and Spatz discussed several proposals from the Glaziers with regard to wage rates for performing the work. When an acceptable pay rate could not be agreed on, Flynn informed Spatz that the work would not be reassigned.

According to Flynn, Spatz contacted him by telephone in early April 1991 to demand that the work be assigned to employees represented by the Glaziers. Flynn testified that, during their conversation, Spatz threatened to picket the Employer's plant and all of its jobsites in the Chicago area if the work was not reassigned. Flynn refused to reassign the work.

Spatz testified that he telephoned Flynn to request the names, addresses, and facsimile numbers of Harmon's principal officers because he intended to send a letter outlining the Glaziers' legal steps. According to Spatz, he sent the letter because he understood that Harmon had employees at the St. Charles facility who were performing glazing work but not receiving the prevailing wage and benefit rates for glaziers in the Chicago area.

By letter dated April 5, 1991, Spatz informed Flynn that the Glaziers would "withhold the services of those it represents to insure that its standard wage and benefit rate is maintained," and intended "to picket your company for its unfair and bad faith position and will picket at locations where your company is performing

work.” According to Flynn, at that time, Harmon had approximately 10 active projects in the Chicago area, including projects on which employees represented by the Glaziers were performing work. As of the hearing date, Harmon had not changed the assignment of the disputed work.

B. *Work in Dispute*

The parties did not stipulate to the work in dispute. The notice of hearing describes the disputed work as “assembly and sealing of components” for curtain walls. The Glaziers claims that the work sought is limited to the glazing of components. Harmon and the Iron Workers contends that the disputed work involves the assembling, sealing, and glazing of components. Although the Glaziers contends that it has never sought the assembly or sealing work, the testimony of its witnesses indicates otherwise. Spatz stated that the work sought is both sealing and glazing and that on other jobs performed under its contract with Harmon, employees represented by the Glaziers have done assembly as well as glazing. Further, the Glaziers failed to disclaim interest in either the sealing or assembly prior to the date of the hearing. Accordingly, we find that the disputed work involves the assembling, sealing, and glazing of components for custom curtain wall systems for a project known as the Sears Merchandising Group’s home office in Hoffman Estates, Illinois, at Harmon’s facility located at 600 Industrial Drive, St. Charles, Illinois.

C. *Contentions of the Parties*

Harmon and the Iron Workers contend that there is reasonable cause to believe that the Glaziers violated Section 8(b)(4)(D) of the Act and that the Board must therefore determine the merits of the dispute. They further contend that the work in dispute should be awarded to employees represented by the Iron Workers on the basis of Harmon’s preference and past practice, its collective-bargaining agreement with the Iron Workers, and the relative skills, and economy and efficiency of operation.

The Glaziers contends the employees represented by it should be assigned the work on the basis of the collective-bargaining agreement with Harmon, their training and skill, and area practice.

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.³

³ Although at the hearing the Glaziers would not stipulate that no agreed-on method for voluntary adjustment of the dispute existed, it offered no evidence establishing the existence of any dispute procedure

As discussed above, testimony was presented in this case that the Glaziers threatened to picket the Employer’s plant and its jobsites in the Chicago area and to withhold the services of the employees it represented if the disputed work was not reassigned. Conflicting testimony was presented by the Glaziers’ witnesses, but it is unnecessary to resolve the question of credibility in order to proceed to a determination of this case. In a 10(k) proceeding, the Board is not required to find that the unfair labor practice alleged has occurred, but need only find that reasonable cause exists to believe that there has been a violation of Section 8(b)(4)(D). The Board may consider contradicted testimony in finding reasonable cause.⁴

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.⁵

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. *Certifications and collective-bargaining agreements*

There are no certifications in this case applicable to the work in dispute. Harmon is a party to collective-bargaining agreements with both the Glaziers and Iron Workers, and provisions of both agreements arguably cover the disputed work. Therefore, this factor does not favor an award of the disputed work to employees represented by either the Glaziers or Iron Workers.

to which the parties have agreed. Further, both Harmon and the Iron Workers denied the existence of any such procedure. Accordingly, we find that no agreed-on procedure for adjustment which would deprive the Board of 10(k) jurisdiction exists.

⁴ *Carpenters Local 1485 (C. J. Reinke & Sons)*, 254 NLRB 1091 (1981).

⁵ The Glaziers filed a motion to quash the notice of hearing in which it contends that it seeks only the glazing work and that its threat to picket was lawful because its aim was to protest Harmon’s payment of less than area standard wages and benefits to employees. As noted above, however, the record is clear that an object of the threat was to seek the work performed at the St. Charles facility, i.e., the assembly, sealing, and glazing of components, for the Glaziers. Accordingly, the motion to quash is denied.

2. Company preference and past practice

Flynn testified that since 1988 employees represented by the Iron Workers have performed Harmon's component assembly, sealing, and glazing at off-site facilities. He also stated that Harmon has been satisfied with the work performed by these employees and that a cooperative working relationship has developed between Harmon and the Iron Workers. Therefore, we find the factor of company preference and past practice favors an award to the employees represented by the Iron Workers.

3. Area and industry practice

No evidence of an industrywide practice with regard to assignment of the disputed work was presented. Nor does the record reflect a uniform area practice with regard to the disputed work. Richard Carlson, business manager for the Iron Workers, testified that employees represented by the Iron Workers have performed off-site assembly, sealing, and glazing for other companies in the Chicago area. As discussed above, since 1988 Harmon has consistently used employees represented by the Iron Workers to perform the disputed work. Spatz testified as to several projects in the Chicago area for which the assembly, sealing, and glazing of curtain wall components has been completed by employees represented by the Glaziers. The projects described by Spatz included both on-site and off-site work. Spatz also named a Chicago area contractor which used employees represented by the Glaziers to perform work identical to the disputed work. Under these circumstances, we find that the factor of area practice is inconclusive and does not favor an award of the disputed work to employees represented by either Union.

4. Relative skills

It appears that both the employees represented by the Glaziers and the employees represented by the Iron Workers possess the requisite skills for assembling, sealing, and glazing the custom curtain wall system components. Flynn testified that the employees represented by the Iron Workers are performing the work in a skillful and competent manner. Spatz testified that the Glaziers have an apprentice training program which specifically addresses the construction of curtain wall systems. Under these circumstances, this factor does not support an award of the work to either group of employees.

5. Economy and efficiency of operations

Flynn testified that because Harmon has consistently used employees represented by the Iron Workers to perform the disputed work over the past 3 years, they are able to work more quickly and with less direction. Flynn also testified that it is more efficient for the employees represented by the Iron Workers to assemble, seal, and glaze the components off-site. Under these circumstances, the factor of efficiency of operations favors an award of the disputed 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 the dispute. We reach this conclusion relying on the factors of company preference and past practice and the efficiency of operations.

In making this determination, we are awarding the work to employees represented by the Iron Workers, 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 Harmon Contract W.S.A., Inc. represented by Shopmen's Local Union No. 473 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, are entitled to perform the work of assembling, sealing, and glazing of components for custom curtain wall systems at the Employer's facility located at 600 Industrial Drive, St. Charles, Illinois.

2. Glaziers, Architectural Metal and Glass Workers Local Union 27, Chicago and Vicinity of the International Brotherhood of Painters and Allied Trades, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Harmon Contract W.S.A., Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Glaziers, Architectural Metal and Glass Workers Local Union 27, Chicago and Vicinity of the International Brotherhood of Painters and Allied Trades, AFL-CIO, shall notify the Regional Director for Region 13 in writing whether it will refrain from forcing Harmon Contract W.S.A., Inc., by means proscribed by Section 8(b)(4)(D), assign the disputed work in a manner inconsistent with the determination.