

**Laborers' International Union of North America,  
Local 368, AFL-CIO and Edward P. Harvey  
d/b/a Pacific Interiors. Case 37-CD-52**

November 14, 1991

DECISION AND DETERMINATION OF  
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed on May 22, 1991, by the Employer, alleging that the Respondent, Laborers Local 368, 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 Carpenters Local 745 and Tapers Local 1944. The hearing was held on July 26 and 29, 1991, before Hearing Officer Thomas W. Cestare. Laborers' Local 368 and Carpenters Local 745, joined by the Employer, each filed posthearing briefs.

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, a Hawaii corporation, is engaged in the business of drywall construction. In the 12 months preceding the hearing, it purchased and received materials valued in excess of \$50,000 directly from places outside the State of Hawaii. 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 Local 368, Carpenters Local 745, and Tapers Local 1944 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

*A. Background and Facts of Dispute*

The Employer has a contract from general construction contractor Hawaiian Dredging to install drywall at the Waikele Ho'omaka Village project. The project involves the construction of 244 townhouses in 24 different buildings. The Employer started working at the project in approximately February 1991<sup>1</sup> It assigned the work of stacking, cutting, hanging, and cleaning up of drywall to employees represented by the Carpenters. The Employer utilized employees represented by the Tapers to tape the wallboards together with tape and composite mud and to clean up all the excess tape and

mud. The Employer has collective-bargaining agreements with the Laborers, the Carpenters, and the Tapers.

Edward Harvey, the Employer's president, testified about a conversation with Larry Cadiz, a Laborers' business agent, in January or February. According to Harvey, Cadiz asked why the Employer did not have any laborers on the job. Brent Bender, the project superintendent for subcontractor Sunrise Construction, testified that at some point in February to April he heard Cadiz ask Ray Shigeta, Hawaii Dredging's job superintendent, why there were no laborers on the job. Cadiz also asked who was doing the cleanup work. He then told Shigeta that the Laborers were going to picket the jobsite because Hawaii Dredging and the Employer did not have any laborers.

Cadiz testified that he did have a conversation with Harvey in which he asked when the Employer was going to hire laborers on the Ho'omaka jobsite. Harvey told Cadiz that he was not going to use laborers. Cadiz also testified that he told Shigeta in May that he had a problem with Hawaii Dredging and the Employer not having any laborers. He informed Shigeta that the Laborers were going to have to picket. Shigeta asked when the picketing was going to start, and Cadiz replied that he would have to see his lawyer first. In May, the Laborers filed a contractual grievance protesting, in part, the Employer's failure to employ laborers to perform work allegedly covered by the Laborers' collective-bargaining agreement.

*B. Work in Dispute*

The disputed work involves the stacking and placement of drywall and cleanup after hanging and taping of drywall at the Ho'omake Village project.

*C. Contentions of the Parties*

The Employer and the Carpenters contend that the work in dispute should be assigned to employees represented by the Carpenters and the Tapers on the basis of collective-bargaining agreements, past practice, employer preference, area practice, skills, and economy and efficiency of operations.

The Laborers contends that the notice of 10(k) hearing should be quashed because it has made no specific threat to picket in support of a jurisdictional claim to the work in dispute. On the merits of the dispute, the Laborers contends that its collective-bargaining agreement, the Employer's and industry practice, and the economy and efficiency of operations favor awarding the work in dispute to employees represented by the Laborers.

The Tapers did not file a brief. At the hearing, this union's business agent testified that it generally agreed with the Employer's position that employees rep-

<sup>1</sup> All dates are in 1991, unless otherwise indicated.

resented by the Tapers should be assigned the taping cleanup.

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

The record indicates that the Laborers has made a claim to perform the work in dispute and that the Laborers' business agent threatened to picket the Ho'omaka Village jobsite because the Employer did not have any laborers on the job. We therefore find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. We further find 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. Collective-bargaining agreements

As previously indicated, the Employer has collective-bargaining agreements with the Carpenters, Tapers, and Laborers. However, only the Laborers' contract has specific language arguably concerning the work in dispute. It states that the Laborers' jurisdiction includes,

Unloading, handling and distributing of all materials, fixtures, furnishings and appliances from point of delivery to stockpiles and from stockpiles to approximate point of installation.

Cleaning and clearing of all debris, including wire brushing of windows, scraping of floors, removal of surplus materials from all fixtures within confines of structure and cleaning of all debris in building and construction area. The general cleanup, including sweeping, cleaning, washdown and wiping of construction facility, equipment and furnishings and removal and loading or burning of all debris including crates, boxes, packaging waste material.

The Carpenters' agreement generally covers all work in connection with the installation of drywall. Similarly, the Tapers' contract generally covers all work involved in the taping and finishing of drywall. In inter-

preting collective-bargaining agreements, the specific is favored over the general.<sup>2</sup> Consequently, consideration of the respective collective-bargaining agreements favors award of the work in dispute to employees represented by the Laborers.

##### 2. The Employer's preference and past practice

The Employer, in accordance with its preference, assigned the work in dispute to employees represented by the Carpenters and the Tapers. In the 12 years that it has been in operation, the Employer's practice has been to assign the unloading, placement, and stacking of drywall in the immediate work area to carpenter employees. The carpenters then cleaned up as they finished drywalling a room. The tapers were also responsible for cleaning as they worked. Prior to 1989, the Employer employed laborers when it did gypsum cement work. If a laborer finished his work before the end of the day, he was assigned to help carpenters stack or cleanup drywall and tapers to clean up mud. Laborers were never assigned to perform only the disputed work. Consequently, since 1989, when the Employer ceased doing gypsum concrete work, the Employer has not employed any laborers, and the work in dispute has been performed exclusively by carpenters and tapers. Accordingly, we find that the Employer's preference and past practice favor awarding the work to employees represented by the Carpenters and the Tapers.

##### 3. Area practice

The record indicates that on townhouse construction projects in Hawaii the disputed work is performed by carpenters and tapers. We find, therefore, that this factor favors the assignment of the disputed work to employees represented by the Carpenters and the Tapers.

##### 4. Relative skills and economy and efficiency of operations

Carpenters cut sheets of drywall into the appropriate sizes and then nail the drywall to wooden frames. Because drywall sheets are quite expensive, carpenters identify which scrap pieces can still be used. In cleaning up, these salvageable pieces are then segregated from the trash pieces, which are thrown into a large trash container. This practice has resulted in the Employer's waste factor for drywall dropping from 7 to 4 percent. The laborers do not possess the requisite skills to differentiate between useable and trash scrap drywall.

The Employer stocks one building a week with drywall, which takes 3-1/2 hours. The carpenters spend 5 to 7 minutes cleaning up drywall debris for each unit on which they are working. Generally, they complete

<sup>2</sup>*Steelworkers Local 392 (BP Minerals)*, 293 NLRB 913 (1989).

four units a day, which results in about a half-an-hour a day for cleanup of drywall debris. The tapers spend from 2 to 5 man hours per week in cleaning up. The Employer does not employ laborers. It would, therefore, face additional costs by hiring them to perform the work in dispute, which totals only 8–13 hours per week, while retaining its carpenters and tapers to perform their other traditional work assignments. In addition, the taping compound mud is very slippery and dangerous when left on the floor, particularly when the floor is cement. Consequently, the tapers pick up the mud with their taping knives or scraper on a continuous basis as they work. Accordingly, the factors of relative skills and economy and efficiency of operations favor awarding the work in dispute to employees represented by the Carpenters and the Tapers.

#### Conclusions

After considering all the relevant factors, we conclude that employees represented by the Carpenters and the Tapers are entitled to perform the work in dispute. We reach this conclusion relying on 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 the Carpenters and the Tapers, not to those Unions or their members. The de-

termination 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 Edward P. Harvey d/b/a Pacific Interiors, represented by the United Brotherhood of Carpenters and Joiners of America, Local 745, AFL–CIO and by Dry Wall Tapers and Finishers and Allied Workers Union Local 1944, AFL–CIO, are entitled to perform the work of stacking and placement of drywall and cleanup after the hanging of drywall and taping at the Ho'omake Village project.

2. Laborers' International Union of North America, Local 368, AFL–CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Edward P. Harvey d/b/a Pacific Interiors, to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Laborers' International Union of North America, Local 368, AFL–CIO shall notify the Regional Director for Region 20 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.