

International Union of Operating Engineers, Local 12, AFL-CIO and Stief Co West

Building Material and Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, AFL-CIO and Stief Co West

Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166, International Brotherhood of Teamsters, AFL-CIO and Stief Co West. Cases 21-CD-597, 21-CD-598, and 21-CD-599

February 28, 1992

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The charge in Case 21-CD-597 in this consolidated Section 10(k) proceeding was filed on September 10, 1991, by the Employer, alleging that the Respondent, Operating Engineers Local 12, 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 Teamsters Local 420 and Teamsters Local 166. The charges in Cases 21-CD-598 and 21-CD-599 were also filed on September 10, 1991, by the Employer, alleging that the Respondents, Teamsters Local 420 and Teamsters Local 166, violated Section 8(b)(4)(D) by engaging in proscribed activity with an object of forcing the Employer to continue to assign certain work to employees they represent rather than to employees represented by Operating Engineers Local 12. The hearing was held on October 16, 1991, before Hearing Officer Jean C. Libby.¹ The Employer filed a posthearing brief.

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, Stief Co West, is a California corporation engaged in the highway construction business. It annually purchases and receives supplies worth in excess of \$50,000 directly from businesses located within California which in turn purchase and receive supplies worth in excess of \$50,000 directly from businesses located outside California. We find that the Employer is engaged in commerce within the meaning of

¹ By letter dated October 16, 1991, Operating Engineers Local 12 declined to appear at the hearing.

Section 2(6) and (7) of the Act and that Operating Engineers Local 12, Teamsters Local 420, and Teamsters Local 166 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer is a subcontractor engaged in the construction of concrete barriers on numerous bridge and highway projects in the State of California. As part of the construction process, the Employer uses a boom truck, which is a tractor with a rear-mounted crane and an attached 45-foot trailer. Heavy forms used in the concrete barrier fabrication process are transported on the boom truck trailer and are positioned and removed at the jobsite by operation of the crane.

The Employer's employees who drive the boom truck and manipulate its crane are classified as working truckdrivers. In accord with several collective-bargaining agreements between the Employer and Teamsters Locals 420 and 166, the Employer has assigned the driving and operation of its boom truck to working truckdrivers who are represented by those Unions.

The Employer has never had a collective-bargaining agreement with Operating Engineers Local 12. The Operating Engineers do have collective-bargaining agreements, however, with general contractors Kasler, MCM, and Brutoco. These agreements contain grievance procedures to resolve jurisdictional disputes. From July 1990 through August 1991, Operating Engineers Local 12 filed four grievances against general contractors claiming that boom truck work should be performed by employees it represents rather than by employees of subcontractor Stief Co who are represented by Teamsters Local 420 and Teamsters Local 166. Those grievances involved a Kasler project in the Wilmington-San Pedro area of Los Angeles, a Brutoco project on Gage Avenue, an MCM project on Oso Parkway in Orange County, and a Kasler project on I-10 in Redlands. In addition to the grievances, officials of Operating Engineers Local 12 made direct claims to Stief Co officials that operating engineers were entitled to perform boom truck work on the first three of the aforementioned projects.

On April 3, 1991, the Employer's president, Judith Carter, attended a second step meeting on the grievance filed by Operating Engineers Local 12 against Brutoco. Teamsters Local 420 agent Greg Boverson, Operating Engineers Local 12 agent Bob Burns, and Brutoco official Tom Salado were also present at the meeting. Carter testified that Burns reacted to Boverson's assertion of a claim to boom truck work by jumping from his chair, pushing the conference table and papers against Carter and Salado, and threatening to "get you both."

In letters to the Employer dated September 6 and 17, Teamsters Local 166 threatened to engage in economic action if the boom truck work were reassigned to employees represented by the Operating Engineers. In letters to the Employer dated June 12 and September 5, Teamsters Local 420 also threatened economic action if the boom truck were reassigned to employees represented by the Operating Engineers.

B. *Work in Dispute*

The disputed work involves the task of driving the Employer's boom truck to and from jobsites and the operation of the boom truck at the jobsites.²

C. *Contentions of the Parties*

The Employer contends that there are current competing claims for the work in dispute and that there is reasonable cause to believe that each of the three Unions involved in this proceeding has violated Section 8(b)(4)(D). The Employer and the Teamsters Locals contend that the work in dispute should be awarded to employees represented by the Teamsters on the basis of collective-bargaining agreements, the Employer's preference and past practice, relative skills, area practice, and economy and efficiency of operations. Furthermore, these parties seek a broad award, encompassing not only the performance of the work in dispute at current jobsites but also the performance of such work at all future jobsites of the Employer in the Southern California area.

As previously indicated, Operating Engineers Local 12 did not appear at the hearing. Its October 16 letter contends that it "has not restrained or coerced the charging party to affect its work assignments, nor is it claimed [sic] the work in question as performed by the charging party."

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k), 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. As discussed above, there is evidence that representatives for Teamsters Locals 420 and 166 and Operating Engineers Local 12 made competing claims to the work in dispute. It is also uncontroverted that each Teamsters Local threatened to engage in economic action if the Employer reassigned the work in dispute to employees represented by Operating Engineers. Although Operating Engineers Local 12's letter denies engaging in coercive action or claiming the

²For the reasons set forth in the "Scope of Award" section of this Decision and Determination of Dispute, we reject the stipulated inclusion of union jurisdictional areas in the description of the work in dispute.

work in dispute, it is uncontroverted that an agent of that Union threatened physical reprisal against the Employer's president in the context of a discussion of a grievance claiming the work in dispute and that Local 12 continues to maintain grievances seeking this work.

Based on the foregoing, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.³ 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*

The Employer has collective-bargaining agreements with Teamsters Locals 420 and 166 which generally cover all truckdriver classifications and performance of the work in dispute. The Employer and the Operating Engineers have never had a collective-bargaining agreement. We find that the factor of collective-bargaining agreements favors an award of the work in dispute to employees who are represented by the Teamsters Locals.

2. *Company preference and past practice*

The Employer prefers that the work in dispute be performed by truckdrivers who are represented by Teamsters Local 420 and Local 166. The Employer has consistently assigned boom truck work to employees represented by Locals 420 and 166 and has never assigned such work to operating engineers. We find that this factor favors an award to employees represented by the Teamsters Locals.

³Chairman Stephens notes that, unlike the union in *Laborers Local 731 (Slattery Associates)*, 298 NLRB 787 (1990), in which he dissented, Local 12 has not established that it has an arguably meritorious claim that work has been subcontracted to the Employer in breach of a lawful union signatory subcontracting clause. Further, he notes that Local 12 did not restrict its conduct to merely filing grievances.

3. Area practice

The uncontroverted evidence is that other companies using boom trucks in the Southern California area have consistently assigned the driving and operation of those trucks to truckdrivers who are represented by Teamsters Local 420 and Teamsters Local 166. There is no evidence of the work in dispute having been performed by employees represented by Operating Engineers Local 12. We find that this factor favors an award of the work in dispute to employees who are represented by the Teamsters Locals.

4. Relative skills

It is undisputed that a Class 1 driver's license is required for the operation of a boom truck. Working truckdrivers represented by the Teamsters Locals possess Class 1 licenses. There is no evidence that operating engineers customarily possess such licenses or the truckdriving skills necessary to obtain them. Accordingly, we find that this factor favors an award of the work in dispute to employees represented by the Teamsters Locals.

5. Economy and efficiency of operations

According to uncontradicted testimony, working truckdrivers represented by the Teamster Locals can perform other concrete barrier construction tasks on a composite work crew at times when they are not needed to operate the boom truck. Operating engineers would be able only to perform the work in dispute. They would sit idle at times when there was no boom truck work to be done. Accordingly, we find that the factor of economy and efficiency of operations favors an award of the work in dispute to the employees represented by the Teamsters Locals.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Teamsters Locals 420 and 166 are entitled to perform the work in dispute. We reach this conclusion by relying on factors of collective-bargaining agreements, employer preference and past practice, area practice, relevant skills,

and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Teamsters Locals 420 and 166, not to those Unions or their members.

Scope of Award

The Employer and the Teamsters have requested a broad award covering the work in dispute at all future Stief Co projects in which the geographic work areas of Teamsters Locals 166 and 420 overlap with Operating Engineers Local 12. Before the Board will make such an award, it must be shown that: (1) the work in dispute has been a continuous source of controversy in the relevant geographic area and is likely to recur; and (2) the offending union has a proclivity to engage in further unlawful conduct in order to obtain the work in dispute. See, e.g., *Laborers International (Paschen Contractors)*, 270 NLRB 327, 330 (1984); *Electrical Workers IBEW Local 104 (Standard Sign)*, 248 NLRB 1144, 1147-1148 (1980). There is no indication in this record that Operating Engineers Local 12 is likely to engage in unlawful conduct in pursuit of work similar to the work in dispute at future projects. Accordingly, the award is limited to the controversy at the jobsites that gave rise to this proceeding.

DETERMINATION OF DISPUTE

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

1. Employees of Stief Co West represented by Teamsters Local 420 and Teamsters Local 166 are entitled to perform the work of driving to and from the jobsite and operating boom trucks for Stief Co West.

2. Operating Engineers Local 12 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Stief Co West to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Operating Engineers Local 12 shall notify the Regional Director for Region 21 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.