

United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States & Canada, Underground & Utilities/Landscape, Local 355, AFL-CIO and ARB, Inc. and International Brotherhood of Teamsters, AFL-CIO, Local 87. Case 31-CD-342

December 11, 1992

DECISION AND DETERMINATION OF
DISPUTE

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

The charge in this Section 10(k) proceeding was filed July 29, 1992,¹ by the Employer, ARB, Inc., alleging that the Respondent, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry, Local 355 (Plumbers Local 355) 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 87. The hearing was held on September 9, before Hearing Officer Norman L. McCracken. Thereafter, the Employer filed a brief in support of its position.

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 California corporation located in Bakersfield (Kern County), California, is engaged in pipeline utility underground construction. During the 12 months preceding the hearing it purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of California. 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 UA Local 355 and Teamsters Local 87 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

For the past 3 years, the Employer has performed "patch paving" and "gas distribution" work for utility companies pursuant to a master underground utilities collective-bargaining agreement executed with UA

Local 355 in 1989.² The Employer utilizes three- to five-man crews composed of a journeyman and several assistant journeymen represented by UA Local 355, to install, repair, and replace plastic, natural gas pipelines pursuant to contracts with public utility companies.

Crews performing "patch paving" work drive to customer worksites, set up traffic control, break up temporary asphalt patchwork with picks and shovels, load the old asphalt into the back of a dumptruck, and place new asphalt in the ground. A crewmember drives a 2-ton dumptruck that carries a load of hot asphalt, purchased from an independent batch plant, to various jobsites. The driver hauls the broken-up temporary asphalt back to the batch plant for recycling after the permanent repair is completed. Crews performing "gas distribution" work drive to the customer's site, install or repair plastic pipe and utility service lines, and back fill the ditch. These crewmembers perform plastic fusion and welding tasks.

The driver on the "patch paving" crew drives the dumptruck between 1 and 1-1/2 hours per day. The driver on the gas distribution crew drives a truck between one-half hour and 1 hour per day. When not driving, the drivers work with other crewmembers to perform the asphalt removal or gas distribution work. A Class B drivers license is required to perform the driving work.

The present dispute began on March 3 when Teamsters Local 87 business representative, Ward Allen, wrote the Employer's vice president and chief operations officer, Scott Summers, about laborers and plumbers performing alleged Teamsters work. Allen requested an immediate meeting to resolve the jurisdictional problem. On March 12, Summers wrote Allen requesting clarification of the jobs that Allen was referring to. On July 23, Allen sent Summers a memorandum stating that Teamsters Local 87 President Glen Kelley had observed Plumbers Local 355 crewmember Allen Martinez driving a dumptruck. Allen asserted, "This is clearly Teamster work!" Allen advised Summers to regard the memo as a "NOTIFICATION OF GRIEVANCE." Allen also asked to inspect applicable payroll records and he requested a meeting to resolve the grievance expeditiously.

On July 27, Kelley wrote Summers formally requesting the names, dates, and hours of any employee, other than a Local 87 member, performing traditional Teamsters work. Kelley also advised Summers that the Employer was in breach of the collective-bargaining agreement by using non-Teamsters-represented em-

² Testimonial evidence in the record established that Teamsters Local 87 has a collective-bargaining agreement with the Employer covering certain classifications of truckdrivers, but the actual collective-bargaining agreement between the Employer and Teamsters Local 87 was not introduced. Teamsters Local 87 offered no evidence at the hearing.

¹ All dates are in 1992 unless otherwise noted.

ployees to perform bargaining unit work. Kelley requested a response by July 29. Otherwise, Kelley advised, unfair labor practice charges would be filed.

On July 28, the Employer wrote Plumbers Local 355 enclosing copies of the written demands for the work in dispute received from Teamsters Local 87. The Employer requested Plumbers Local 355's position regarding the reassignment of driving work related to underground utility work. Also, on July 28, Plumbers Local 355 informed the Employer, inter alia, that it "would take economic action, if necessary, against your Company, including strikes and picketing, if this work is reassigned to anyone else."

B. Work in Dispute

The work in dispute involves driving tasks related to underground utility work.

C. Contentions of the Parties

The Employer contends that there is reasonable cause to believe that Plumbers Local 355 violated Section 8(b)(4)(D) of the Act, and that the factors of collective-bargaining agreements, employer preference and practice, economy and efficiency of operations, specialized skills, and area and industry practice favor a jurisdictional award to employees represented by Plumbers Local 355. Neither Plumbers Local 355 nor Teamsters Local 87 filed a brief or advanced a position.

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.

As set forth above, on July 28, Plumbers Local 355 threatened the Employer that any change in the assignment of the work in dispute would result in it striking and picketing the Employer. We find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that there is no voluntary method for resolving the jurisdictional dispute. Accordingly, we find that this 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 of a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors in-

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. Certification and collective-bargaining agreements

There is no evidence of any Board certification of a representative of any of the employees involved.

The current collective-bargaining agreement between the Employer and Plumbers Local 355 provides that the agreement covers all utility and utility pipeline construction work of every kind and description, including work allied directly thereto. The Employer construes the agreement to cover all driving related to underground utility work on the ground that the crews must drive to the sites to perform the work. The Employer argues that the agreement contemplates that Plumbers-represented employees performing underground utility work also perform incidental driving tasks by requiring that "trucks used in connection with work covered by this Agreement" shall be permanently marked with the Employer's name and "driven by a competent driver who shall be paid at his prevailing wage rate."

The Employer's chief operations officer, Scott Summers, testified that, although the Employer has a contract with Teamsters Local 87 and employs Teamsters as watertruck drivers, low bed drivers, pipetruck drivers, and field truckdrivers, no Teamsters are employed to perform any underground utility work. The Employer's president, Brian Pratt, testified that he is not aware of any specific provision in the Teamsters contract which covers underground utility work. As noted, no collective-bargaining agreement between the Employer and Teamsters Local 87 was adduced as evidence.

We conclude that the factor of collective-bargaining agreements favors an award of the work in dispute to employees represented by Plumbers Local 355.

2. Employer preference and past practice

The Employer's past practice has been to assign the underground utility work to employees represented by Plumbers Local 355. President Pratt testified that the Employer prefers to continue this work assignment.

We find that the Employer's past practice and present preference favor an award of the work to employees represented by Plumbers Local 355.

3. Relative skills and economy and efficiency of operations

Plumbers Local 355-represented employees are specially trained in the installation of plastic pipe. They have received 4 to 6 months of certified apprenticeship school training that is necessary to perform rudimentary fusions, tapings, weldings, and pinchings.

Economy and efficiency of operations would be reduced by the need to train a Teamsters driver in plastic fusions and welding operations. This would take about 6 months. Employer President Pratt estimated that the Teamsters lack of apprenticeship school training would reduce production per man hour and decrease productivity 20 to 25 percent per dollar of piping installed. Summers, the Employer's chief operations officer, estimated that the learning curve and training time deficits incurred from employing a Teamster driver would reduce crew efficiency by about 15 percent.

Pratt further testified that if the teamster performed only driving duties, he would spend approximately 30 minutes a day working, 15 minutes a day getting to his job, and 15 minutes a day getting back to the yard. The worker would be unproductive during the piping phases of the work. By contrast, the versatility of the Plumbers Local 355-represented crewmembers, and their experience in working together on stable crews with low turnover promote the efficiency and speed of completing work tasks.

There is no evidence that it would be as efficient or economical to use Teamsters Local 87-represented employees to perform the disputed work. Therefore, we find that the factor of relative skills, economy and efficiency of operations favors an award to employees represented by Plumbers Local 355.

4. Area and industry practice

Employer witnesses testified that the practice of employers in the area and industry has been to assign the work in dispute to employees represented by Plumbers Local 355. The Employer's president, Brian Pratt, testified that two area competitors, W. M. Wiles Co. and West Valley, use Plumbers Local 355 represented employees to perform underground utility work and relat-

ed driving tasks, and do not use Teamsters Local 87 represented employees to perform any kind of underground utility work, including driving. Plumbers Local 355's business representative, Dennis Soares, testified that an estimated 16 industry contractors are signatory to the Master Underground Utility Agreement with Plumbers Local 355.

We find that the factors of area and industry practice favor an award of the work in dispute to employees represented by Plumbers Local 355.

Conclusions

After considering all the relevant factors, we conclude that the employees represented by Plumbers Local 355 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, relative skills, economy and efficiency of operations, and area and industry practice. In making this determination, we are awarding the work to employees represented by Plumbers Local 355, 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 of ARB, Inc., represented by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Underground and Utilities/Landscape, Local 355, AFL-CIO, are entitled to perform all driving tasks related to the Employer's underground utility work.