

Local 486, International Brotherhood of Electrical Workers, AFL-CIO and New England Power Service Company and Local 223, International Brotherhood of Electrical Workers, AFL-CIO.
Case 1-CD-921

July 21, 1993

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed on January 13, 1993, by the Employer, New England Power Service Company (NEPSCO), alleging that the Respondent, Local 486, International Brotherhood of Electrical Workers, AFL-CIO (Local 486) 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 223, International Brotherhood of Electrical Workers, AFL-CIO (Local 223). The hearing was held on February 9, 1993, before Hearing Officer Gerald Wolper.

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

NEPSCO, a Massachusetts corporation, with its principal place of business in Westborough, Massachusetts, provides construction, repair, and other services to public utilities and other employers. The Employer annually derives gross revenue in excess of \$250,000 from its operation and annually receives goods and materials valued in excess of \$50,000 from points located outside the Commonwealth of Massachusetts. 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 486 and Local 223 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

NEPSCO is a subsidiary of and service company to the New England Electric System (NEES), a public utility holding company with subsidiaries which operate electrical generating plants, transmission lines, and retail electrical facilities throughout New England. NEPSCO provides services to NEES, including legal, accounting, administrative, maintenance, and construction services. Its maintenance and construction department provides employees for NEES subsidiaries' construction work and, also along with outside private

contractors, bids on NEES subsidiary construction projects.

For at least the past 32 years NEPSCO has had a collective-bargaining contract with Local 486, which represents its maintenance and construction employees performing structural, maintenance, and electrical work.¹

Under a policy instituted in the 1970s and ratified in a 1982 memorandum of understanding between NEPSCO and a district office of the IBEW, when NEPSCO needs employees in addition to its own for a particular job, it hires supplementary employees on an "as-needed basis," directly from local building trade unions under direct hiring arrangements (Letters of Assent). On August 7, 1989, NEPSCO and Local 223 executed a Letter of Assent. This bound NEPSCO to Local 223's collective-bargaining contract with the Rhode Island and Southeast Massachusetts Chapter, National Electrical Contractors Association, Inc. (NECA) whenever NEPSCO employed workers referred by the Local 223 hiring hall.²

In July 1992, NEPSCO started work on the electrical work at NEPSCO's Brayton Point power plant. As its Local 486 employees were employed on other jobs, NEPSCO hired electricians through the Local 223 hiring hall. However, in November 1992, NEPSCO experienced a sharp decrease in construction work, resulting in the layoff of its Local 486 employees. Because Local 486 employees were then available to work on the Brayton Point project, which had not been completed, NEPSCO advised Local 223 that it intended to replace the Local 223 employees on that project with its Local 486 employees. On November 27, 1992, NEPSCO discharged the Local 223 electricians and the Local 486 employees took their place.

On January 6, 1993, Local 223 filed a grievance, alleging that NEPSCO's November 27 action was a contract violation. A hearing on the grievance was scheduled to be held January 12, 1993, before the contractual labor management committee, but was subsequently canceled.³ On the day before the scheduled committee hearing, Richard Raymond, business manager of Local 486, called James A. Cariani, NEPSCO's manager of labor relations and construction, and told him that "if [Cariani] changed his mind [as a result of the grievance hearing scheduled for the next day] and made a change in the work assignment at Brayton Point [Raymond] would have a job action and strike this facility."

¹The most recent NEPSCO/Local 486 collective-bargaining contract is effective from May 12, 1992, to May 11, 1995.

²The most recent NECA/Local 223 contract is effective from December 1, 1991, to August 31, 1994.

³The labor management committee consisted of three electrical contractor signatories to the Local 223/NECA agreement and two representatives from Local 223.

The labor management committee met on January 19, 1993.⁴ On January 25, 1993, Local 223 informed NEPSCO's counsel that the labor management committee had found that NEPSCO's November 27, 1992 action had violated its contract with Local 223 and that NEPSCO was to pay back wages and benefits to the Local 223 employees terminated on that date.

B. *Work in Dispute*

The disputed work involves the electrical control work, wiring, and remote and local control work performed by the Employer in connection with the construction of a city water fire protection system at New England Power Company's Brayton Point station located in Somerset, Massachusetts.

C. *Contentions of the Parties*

The Employer and Local 486 contend that there is reasonable cause to believe that Local 486 violated Section 8(b)(4)(D) of the Act and that the proceeding is properly before the Board for determination of the dispute. They further argue that on the basis of Local 486's collective-bargaining contract with the Employer, the Employer's past practice, economy and efficiency of operations, and employer preference the work in dispute should be assigned to employees represented by Local 486.

Local 223 contends that the evidence does not establish a jurisdictional dispute cognizable under Section 8(b)(4)(D) of the Act. It claims that the Employer voluntarily reassigned the work to Local 486 and that since Local 486 had already been assigned the disputed work at the time of its alleged threat, the alleged threat was not serious and would not rise to the level of a jurisdictional dispute. Local 223 maintains that the real issue in this proceeding is that the Employer's reassignment of the disputed work to Local 486 violated the collective-bargaining agreement between Local 223 and NECA and that the labor management committee's determination precludes Board review.

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 noted above, Cariani testified that on January 11, 1993, he received a call from Local 486 Business Manager Richard Raymond who threatened to strike the Brayton Point facility if Cariani reassigned the disputed work to Local 223. There is no record evidence to support Local 223's claim that this threat was not

genuine. Under settled Board policy, reasonable cause to believe that a violation of Section 8(b)(4)(D) exists if a labor organization which represents employees who are assigned the disputed work puts improper pressure on an employer to continue such assignment.⁵ Based on the foregoing and the record as a whole, we find that there is reasonable cause to believe that an object of Local 486's action in threatening to strike NEPSCO was to force NEPSCO to continue to assign the disputed work to employees represented by Local 486 and that a violation of Section 8(b)(4)(D) has occurred.

Further, contrary to Local 223's contention, we find that by filing the grievance against NEPSCO for reassigning the work to Local 486, Local 223 was, in effect, making a demand for the work.⁶ Finally, because Local 486 was not a party to, or bound by, the arbitration proceeding between NEPSCO and Local 223, we find that no agreed-upon method exists for the voluntary adjustment of the dispute which is binding on all the parties.⁷ 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. *Certifications and collective-bargaining agreements*

The Board has certified neither Local 486 nor Local 223 as the collective-bargaining representative of NEPSCO's employees who perform the disputed work. NEPSCO has collective-bargaining agreements with Local 486 and Local 223, both of which contain language which covers the disputed work. Thus, we find that this factor favors neither Union.

2. *Employer preference and past practice*

The Employer prefers to use the employees represented by Local 486, and its past practice for more

⁵ See, e.g., *Iron Workers Local 350 (Cornell & Co.)*, 271 NLRB 1182 (1984); *Machinists Lodge 27 (Joseph E. Seagram & Sons)*, 198 NLRB 407, 408 (1972); and *Laborers Local 1184 (H. M. Robertson Pipeline Constructors)*, 192 NLRB 1078, 1079 (1971).

⁶ See, e.g., *Electrical Workers IBEW Local 486 (New England Power)*, 219 NLRB 692, 693 (1975).

⁷ See, e.g., *Nashua Printing Pressmen Local 359 (Telegraph Publishing Co.)*, 212 NLRB 942, 944 (1974).

⁴Local 486 did not appear and was not represented at the hearing.

than 30 years has been to assign the disputed work to employees represented by Local 486 unless Local 486 employees are unavailable because they are employed by the Employer on a different project. Accordingly, we find that this factor favors an award to employees represented by Local 486.

3. Area and industry practice

Local 486 contends that area and industry practice conforms to the Employer's past practice. There is no evidence in the record, however, to support this contention. Accordingly, we find that this factor favors neither Union.

4. Relative skills

The Employer challenges the relative skills of employees represented by Local 223 to perform the work in dispute. The record establishes that employees represented by Local 223 had been performing the work for a substantial period of time, and there is no evidence that the Employer considered unsatisfactory any of the work in dispute performed by these employees. No party disputes that the employees represented by Local 486 possess the skills needed to perform the work in dispute. We find therefore that this factor favors employees represented by neither Union.

5. Economy and efficiency of operations

The Employer maintains that, unlike employees represented by Local 223, the employees represented by Local 486 devote most of their worktime to power plant work and that their greater familiarity with this type of work makes for more efficient employee utili-

zation. In addition, should emergencies arise, the availability in a geographic area of employees skilled in power plant electrical work would permit the transfer of these employees from one project to another without disrupting electrical service to its customers. Accordingly, we find that this factor favors employees represented by Local 486.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 486 are entitled to perform the disputed work. We reach this conclusion relying on the factors of the Employer's preference and past practice, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Local 486, 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 New England Power Service Company represented by Local 486, International Brotherhood of Electrical Workers, AFL-CIO are entitled to perform the electrical control work, wiring, and remote and local control work being performed by the Employer in connection with the construction of a city water fire protection system at the New England Power Company's Brayton Point station located in Somerset, Massachusetts.