

Building Material and Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, AFL-CIO and Stief Co. West and International Union of Operating Engineers, Local 12, AFL-CIO. Case 21-CD-608

February 28, 1994

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

The charge in this Section 10(k) proceeding, filed on August 26, 1992, by the Employer, alleges that the Respondent, Teamsters Local 420, 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 Operating Engineers Local 12. The hearing was held on May 19, 1993, before Hearing Officer Kevin R. Steen.¹ The Employer filed a posthearing brief.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error.² On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, Stief Co. West, is a California corporation engaged in highway construction. It annually purchases and receives supplies worth over \$50,000 directly from businesses within California, which in turn purchase and receive supplies worth over \$50,000 directly from businesses outside California. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Operating Engineers Local 12 and Teamsters Local 420 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer is a subcontractor engaged in the construction of concrete barriers on bridge and highway projects in California. As part of the construction process, the Employer uses a boomtruck, which is a tractor with a rear-mounted crane and an attached 45-foot trailer. Heavy forms used in fabricating the barriers are carried on the boomtruck trailer. The crane is used to remove and position them at the jobsite.

¹ Operating Engineers Local 12 did not appear at the hearing.

² In his report, the hearing officer incorrectly gives a date of September 1991 for Local 420's threat of economic action against the Employer. The correct date is August 24, 1992.

The Employer's employees who drive the boomtruck and operate its crane are classified as working truckdrivers. In accord with its collective-bargaining agreement with Teamsters Local 420, the Employer has assigned the driving and operation of its boomtrucks to working truckdrivers represented by that Union.

The Employer has never had a collective-bargaining agreement with Operating Engineers Local 12. The Operating Engineers, however, does have collective-bargaining agreements with several general contractors, including Kiewit Pacific, that provide grievance procedures for resolving jurisdictional disputes. On August 19, 1992, Local 12 filed a grievance against Kiewit Pacific regarding the subcontracting work involved here. Local 12 Representative Brad Nelson informed Kiewit Representative Bill Murphy that the work was operating engineers' work and that Local 12 wanted Stief to sign a collective-bargaining agreement with Local 12 and wanted an operating engineer on the boomtruck.

Subsequent to Local 12's filing the above grievance, Local 420 claimed in an August 24 letter that the boomtruck work performed by the Employer at the Garden Grove Interchange jobsite should continue to be assigned to employees it represented. It also threatened to take immediate economic action if the Employer removed these employees from boomtruck work on that project.

B. Work in Dispute

The disputed work, as agreed to by the parties appearing at the hearing, involves the task of driving the Employer's boomtruck to and from jobsites and the operation of the boomtruck at jobsites, including the lowering, setting, and raising of barrier forms.

C. Contentions of the Parties

The Employer contends that there are competing claims for the work in dispute and that there is reasonable cause to believe that each of the Unions involved in this proceeding has violated Section 8(b)(4)(D). The Employer and Teamsters Local 420 maintain 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. In addition, the Employer seeks an award that encompasses not only performance of the work in dispute at the Garden Grove Interchange site, but also performance of such work at all the Employer's future jobsites in southern California.

As noted previously, Local 12 did not appear at the hearing. Its legal counsel, in a letter that is in evidence, advised the Regional Director for Region 21

that it does not seek representation of the Employer's employees and thus would not participate.³

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 no agreed-upon method for voluntarily resolving the dispute. As discussed above, there is evidence that representatives of Teamsters Local 420 and Operating Engineers Local 12 have made competing claims to the work in dispute.⁴ Teamsters Local 420 also threatened economic action if the work in question did not continue to be assigned to employees it represents. We therefore find reasonable cause to believe that such a violation has occurred. We further find that no agreed-upon method exists for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Thus, 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 a collective-bargaining agreement with Teamsters Local 420 that covers the truckdriver classification involved in performing the work in dispute. The Employer has never had a collective-bargaining agreement with Operating Engineers Local 12. This factor favors award of the disputed work to employees represented by Teamsters Local 420.

³We do not construe counsel's letter as an attempt to disclaim the work. In that regard, we note that Local 12 sought to have an operating engineer represented by it placed on the boomtruck, rather than have a current employee of the Employer placed under its representation.

⁴Chairman 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 with the general contractor.

2. Employer preference and past practice

The Employer has always assigned the work in dispute to truckdrivers represented by Local 420 and prefers to continue doing so. Consequently these factors favor an award to employees represented by Local 420.

3. Area practice

The Employer and Local 420 presented testimony that the area practice is to have the disputed work performed by employees represented by the Teamsters. No witness could cite any instance in which the work in dispute was performed by employees represented by the Operating Engineers. Absent evidence to the contrary, this factor also favors an award to employees represented by the Teamsters.

4. Relative skills

A class 1 driver's license is required to drive the boomtrucks used in performing the work in dispute. Employees represented by Local 420 possess this license. There was no evidence that employees represented by the Operating Engineers have a class 1 driver's license. This factor weighs in favor of an award to employees represented by the Teamsters.

5. Economy and efficiency of operations

The Employer presented testimony that it is both safer and more efficient to have the truckdriver operate the boom. The Employer also maintained that it is more economical and more efficient to have its work performed by employees represented by the Teamsters because they work with a composite crew on other tasks when they are not driving or operating the boom. The Employer also testified that employees represented by the Operating Engineers are only required to operate the boom. The uncontroverted testimony regarding this factor thus favors award of the work to employees represented by the Teamsters.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Teamsters Local 420 are entitled to perform the work in dispute. We reach this conclusion by relying on the factors of collective-bargaining agreements, employer preference and 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 Local 420, not to that Union or its members.

Scope of Award

The Employer has requested a broad award covering the work in dispute at all future Stief Co. West

projects in southern California. To make such an award, the Board must find 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 (Paschen Contractors)*, 270 NLRB 327, 330 (1984); *Electrical Workers IBEW Local 104 (Standard Sign)*, 248 NLRB 1144, 1147–1148 (1980). Inasmuch as employees represented by charged party Teamsters Local 420 have been awarded the work in dispute, however, there is no identifiable “offending union” in this proceeding, and thus no

basis for any broad award. Accordingly, we limit the award to the controversy at the jobsite that gave rise to this proceeding.

DETERMINATION OF DISPUTE

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

Employees of Stief Co. West represented by Teamsters Local 420 are entitled to perform the work on the Garden Grove Interchange construction project of driving the Employer’s boomtruck to and from jobsites, and operation of the boomtruck at jobsites, including the lowering, setting, and raising of barrier forms.