

**Southern California District Council of Laborers, affiliated with the Laborers' International Union of North America, AFL-CIO and Advanco Constructors, Inc. and Southern California Pipe Trades District Council 16, Party in Interest and United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 250, AFL-CIO, Party in Interest.**  
Case 31-CD-345

May 11, 1994

DECISION AND DETERMINATION OF  
DISPUTE

BY MEMBERS STEPHENS, DEVANEY, AND  
BROWNING

The charge in this Section 10(k) proceeding was filed September 3, 1993, by the Employer, Advanco Constructors, Inc., alleging that the Respondent, Southern California District Council of Laborers, affiliated with the Laborers' International Union of North America, AFL-CIO (Laborers), 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 United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 250, AFL-CIO (Local 250, Pipefitters, or Pipefitters Local 250).<sup>1</sup> The hearing was held November 8 and 16, 1993, before Hearing Officer Andrea Beaubien.

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

Advanco Constructors, Inc., a Division of Zurn Constructors Inc., is a California corporation engaged in heavy construction with a principal place of business in Upland, California. During the 12 months preceding the hearing, Advanco had gross revenues in excess of \$1 million, and during the same period it purchased and received materials directly from enterprises located outside the State of California in excess of \$50,000. 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 250, District

Council 16, and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer, a member of the Engineering Contractors Association (ECA),<sup>2</sup> is engaged in heavy construction. On August 26, 1992, the Employer bid on a proposal offered by the city of Los Angeles for work at the Hyperion Treatment Plant located in Playa Del Rey, California. The Employer was the low bidder on the project and on January 8, 1993, was awarded the contract.

On the day the bid was submitted, Local 250 Business Agent Jim Jones called the Piping Industry Progress and Education Trust Fund (PIPE), described as a labor-management cooperative committee, to report that the Employer had not bid any hours on the project at the "pipefitter" rates.

On August 28, 1992, PIPE sent a letter to the city of Los Angeles protesting the Employer's bid. In the letter, PIPE reports that the Employer's bid did not list any workers under the pipe trades classification, although the protest letter claims that 14,000 hours of work on the project requires "the expertise of qualified, trained journeymen and apprentices in pipe fitting and the plumbing industry to install such a system." The letter also states that the Employer has not employed any "journeyman or apprentice pipefitters or plumbers to perform the piping work," choosing instead to utilize the Laborers' group IV pipelayer classification. PIPE claims the group IV pipelayer classification was intended to cover pipelaying in the streets in conjunction with utility work. At the close of the letter, PIPE requests that the city assign all piping work on the project to the plumbers/pipefitters classification and award the project to the contractor that will pay the prevailing wage to this classification.

By letter dated September 24, 1992, the city informed the Employer that it would enforce the payment of pipefitter wages for pipe work performed by laborers. On January 21, 1993, the Employer sent a letter protesting the city's decision to require that it pay the prevailing wage for the pipefitter classification, as opposed to the prevailing wage for the Laborers' group IV pipelayer classification.

On February 17, 1993, the city convened a meeting to discuss the dispute. The meeting was attended by representatives of the city, PIPE, the Pipefitters Local 250 and District Council 16, the Laborers, and the Employer. Attorney Cutler, who represented PIPE at the

<sup>1</sup> Southern California Pipe Trades District Council 16 (District Council 16) and Local 250 were represented at the hearing by Attorney Jeffrey Cutler. Cutler stated that the positions taken by him at the hearing are representative of the interests of both parties.

<sup>2</sup> As a member of the ECA, the Employer at all relevant times has been signatory to collective-bargaining agreements with the Carpenters, Cement Masons, Operating Engineers, Teamsters, and the Laborers.

meeting, stated that the object of the bid protest was to have the “pipefitter” wage rate paid for all the piping work on the project. The Laborers replied that the employees performing the piping work were being paid the “pipelayer” wage rate as required by their master labor agreement with the Employer.

During the meeting, District Council 16 Business Manager Ray Foreman asked Laborers Representative David Key, “Are you claiming my work?” When Key responded that the Laborers were indeed claiming the piping work, Foreman became angry and repeated the question several times. At one point in the meeting, Foreman stated that an alleged intercraft agreement in northern California had already determined the appropriate allocation of the disputed work among the crafts. The employer representative pointed out that the northern California agreement had been nullified.

Since the award of the contract to the Employer on January 8, 1993, employees represented by the Laborers have been performing all pipe work on the project. Despite the parties’ collective-bargaining agreement, the Employer has agreed to pay the Laborers-represented employees performing the work the higher “pipefitter” wage rate as ordered by the city of Los Angeles.

By letter dated July 29, 1993, the Laborers informed the Employer that the work being performed at the Hyperion Treatment Plant was within their jurisdiction, and that the Laborers would resist any reassignment of the work to another craft. The letter threatened that the Laborers would take economic action against the Employer if the work were reassigned.

#### B. *Work in Dispute*

The disputed work involves all piping work at the Hyperion Treatment Plant located in Playa Del Rey, California. The work includes replacing and relocating pipe, piping work to handle caustic chemical substances using plastic pipe, piping work for storm drains, sewers, fuel oil, compressed air, water, and sludge lines, and other piping work where “ductal” iron pipe is used. In connection with this work, the employees also prepare the site by digging, grading, compacting, lagging, shoring, and backfilling.

#### C. *Contentions of the Parties*

The Employer and Laborers contend that the work in dispute is covered by their current collective-bargaining agreement, and therefore the Employer is contractually obligated to assign the piping work to employees represented by the Laborers. The Laborers point out that the group IV pipelayer wage rate has been accepted by the State of California as an appropriate prevailing wage for the work covered by that classification. Thus, the Laborers contend, the Employer is obligated to pay the group IV pipelayer wage

rate to employees performing the work in dispute because such work is covered by the collective-bargaining agreement.<sup>3</sup>

District Council 16 and Local 250 assert that neither has made a claim for the work in question such that a 10(k) hearing is warranted and move to quash the notice of hearing. They maintain that the purpose of the bid protest was to require the Employer to pay prevailing wages for the pipelaying work, and not to have the work reassigned to employees represented by Local 250.

#### 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.

The record shows that the parties have not agreed on a method to adjust this dispute voluntarily.

Based on the record as a whole, we find that Local 250 has made a claim for the work in dispute such that a 10(k) hearing is warranted. The protest letter filed by PIPE with the city of Los Angeles, which PIPE wrote as a result of Local 250’s complaint, seeks the reassignment of work to employees employed in the pipe trades classification. PIPE argues that the work in dispute requires “the expertise of qualified trained journeymen and apprentices in pipefitting and the plumbing industry,” and suggests that the employees represented by the Laborers are not qualified to perform this level of work. At no point does the protest letter challenge the prevailing wage rate associated with the Laborers’ group IV classification.

We further find that the conduct of District Council 16 Business Manager Ray Foreman at the February 17 meeting indicates that an object of the bid protest was the reassignment of the piping work to employees represented by Local 250. Foreman’s repeated referral to the disputed work as “my work,” and his suggestion that the northern California agreement controls the allocation of the piping work among the two crafts, demonstrate the Pipefitters’ claim for the work. Foreman testified at the hearing that most of the work in dispute was “Pipefitters’ work,” and that since the State of California had approved the Laborers’ group IV pipelayer classification, “the laborers have used that classification to do all of our work whenever they think they can get away with it.”

The above statements by PIPE and District Council 16 representatives were made on behalf of employees

<sup>3</sup>The collective-bargaining agreement covers, inter alia, “[a]ll work involved in laying and installation of pipe both outside and within sewage filtration and water treatment plants, including, but not limited to, mechanical and pressurized pipe within.”

represented by Local 250 and in support of Local 250's claim for the work. As such, they constitute evidence that Local 250 had indeed sought the reassignment of the work in dispute to employees it represents. See *Glass & Pottery Workers Local 158 (Atlas Foundry)*, 297 NLRB 425, 428 (1989).

Although PIPE is a joint labor-management committee, and thus is a separate entity from either District Council 16 or Local 250, we conclude, based on all the circumstances, that PIPE was acting on behalf of Local 250 and District Council 16 when it sent the letter of protest to the city. We also find it significant that a Local 250 business agent initiated the bid protest by reporting to PIPE that the Employer had not bid any hours at the pipefitter rates. We also note that Ray Foreman, business manager for District Council 16 and a vocal spokesperson on behalf of the Pipefitters, is also a trustee on PIPE's board of trustees. Moreover, Local 250, District Council 16, and PIPE have all been represented by Cutler in the bid protest and subsequent Board proceedings. Indeed, Cutler stated on the record that the positions taken by him were representative of the identical interests of Local 250 and District Council 16.

Evidence of Local 250's claim is disputed by testimony presented by PIPE, Local 250, and District Council 16 that they did not make a demand for the work. PIPE Representative Mike Massey testified that the bid protest was based on the fact that the Employer did not bid any hours at the pipefitter rates utilizing employees in the pipe trades classification. Despite this assertion, Massey admitted that it was impossible to tell from the bid alone which employees would be performing the piping work or what wage rate they would be paid.

The record shows that the Laborers have at all times claimed the work in dispute and, by letter dated July 29, 1993, threatened to take economic action against the Employer if the work was reassigned to another craft.

In a 10(k) proceeding the Board is not charged with finding that a violation did in fact occur, but only that reasonable cause exists for finding a violation. Thus, a conflict in the testimony need not be resolved in order for the Board to proceed to a determination of the dispute. *Laborers Local 334 (C. H. Heist Corp.)*, 175 NLRB 608, 609 (1969). Thus, even assuming that an object of Local 250's protest was the payment of prevailing wages, we find reasonable cause to believe that another object was the reassignment of the disputed work to employees it represents. See *Electrical Workers IBEW Local 701 (Federal Street Construction)*, 306 NLRB 829, 831 (1992).

We further find that the Laborers' July 29 letter constitutes a threat of economic action if the work in dispute was reassigned. Under these circumstances, we

find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-on 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, and we deny the motion by District Council 16 and Local 250 to quash the notice of hearing.

#### 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, 1410-1411 (1962).

The following factors are relevant in making the determination of the dispute.

##### 1. Certification and collective-bargaining agreement

The Employer, through its membership in the ECA, has been a party to the Laborers' Master Labor Agreement since 1984. The current contract is effective July 1992 through July 1995. Article I, section B(5) of the contract describes the piping work covered by the contract as "all work involved in laying and installing pipe outside of a building, structure or other work regardless of the material used or substance conveyed, and all work involved in laying and installing of pipe both outside and within sewage filtration and water treatment plants, including, but not limited to mechanical and pressurized pipe within." The contract includes group III and group IV classifications entitled "pipelayer's back-up man" and "pipelayer" respectively. A majority of the piping work at the Hyperion Treatment Plant is being performed by employees classified as group IV pipelayers.

The Employer does not have an agreement with Local 250 or any other Pipefitters union. The last collective-bargaining agreement between the Employer and a Pipefitter union expired in 1983. The Employer has, however, signed letter agreements to use Pipefitters-represented employees when it was specifically required to do so by a contract. Based on the above, we find that this factor favors an award of the work to employees represented by the Laborers.

##### 2. Company preference and past practice

Since January 1984, the Employer has employed employees represented by the Laborers to perform all piping work on its projects. The Employer's president,

Armand DeWeese, testified that the Employer prefers to use Laborers-represented employees because they are familiar with the Employer's practices and safety policies, and because the Employer is able to move them as a crew from job to job. Accordingly, we find that this factor favors an award of the work in dispute to employees represented by the Laborers.

### 3. Area and industry practice

The record shows that employer-members of the ECA use employees represented by the Laborers to perform their piping work pursuant to the ECA's collective-bargaining agreement with the Laborers. The record also shows, however, that at least three employers in the area use employees represented by the Pipefitters to perform such work. In view of the evidence that both groups of employees perform the work in dispute on various projects in the area, we find that this factor does not favor any group of employees.

### 4. Relative skills

DeWeese testified that prior to 1984, the Employer used employees represented by the Pipefitters to join the pipes. Since that date, he testified that employees represented by the Laborers have satisfactorily completed all piping work on the Employer's projects and that they are sufficiently skilled to perform this work. The record shows, however, that some employers in the industry continue to use employees represented by the Pipefitters to perform their piping work. Accordingly, we find that both groups of employees are sufficiently skilled to perform the work in dispute and that this factor does not favor any group of employees.

### 5. Economy and efficiency of operations

In addition to the pipelaying work, Laborers-represented employees also perform the related digging, grading, compacting, lagging, shoring, and backfilling

work. The time spent actually laying and coupling the pipe is only 5–10 percent of the total work involved in the project. DeWeese testified that to have employees represented by the Pipefitters lay and join the pipe is inefficient because they would be idle for a majority of the time. DeWeese also testified that the Employer provides the Laborers-represented employees with on-the-job training, and attempts to keep the crews and their foremen together from job to job to maximize their efficiency, productivity, and safety.

Based on the testimony presented, we find that this factor favors an award of the disputed work to employees represented by the Laborers.

### Conclusions

After considering all the relevant factors, we conclude that employees represented by Southern California District Council of Laborers, affiliated with the Laborers' International Union of North America, AFL–CIO are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's collective-bargaining agreement with the Laborers, 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 the Laborers, 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 represented by Southern California District Council of Laborers, affiliated with the Laborers' International Union of North America, AFL–CIO are entitled to perform all piping work at the Hyperion Treatment Plant in Playa Del Rey, California.