

**Glaziers, Architectural, Metal and Glassworkers,
Local No. 513, AFL-CIO and Pacific Glass and
Exteriors, L.L.C. and International Association
of Bridge, Structural and Ornamental Iron
Workers, Local Union No. 392, AFL-CIO.**
Case 14-CD-903

July 14, 1995

DECISION AND DETERMINATION OF
DISPUTE

BY MEMBERS STEPHENS, COHEN, AND
TRUESDALE

The charge in this Section 10(k) proceeding was filed January 27, 1995, by Pacific Glass and Exteriors, L.L.C., the Employer, alleging that Glaziers, Architectural, Metal and Glassworkers, Local No. 513, AFL-CIO (Glaziers), 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 International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 392, AFL-CIO (Iron Workers). The hearing was held March 2, 1995, before Hearing Officer Leonard J. Perez.

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 is a sole proprietorship authorized to do business in the State of Illinois, with principal offices in Mt. Vernon, Illinois, and a jobsite located on the campus of Southern Illinois University, Edwardsville, Illinois, where it is engaged in the non-retail installation of curtain walls, aluminum windows, glass, and doors. For its conduct of business at the jobsite, the Employer has purchased and received goods valued in excess of \$50,000 from points located outside the State of Illinois. Thus, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

We also find, based on Iron Workers Business Agent Cumberland's testimony at the hearing, that the Iron Workers is an organization in which employees participate and which exists for the purpose of, *inter alia*, dealing with employers concerning grievances, wages, hours of employment, and other conditions of work. Thus, we find that the Iron Workers is a labor organization within the meaning of Section 2(5) of the Act. We further find, based on prior Board precedent,¹

¹ See *Glaziers Local 513 (National Glass)*, 299 NLRB 35 (1990).

that the Glaziers is a labor organization within the meaning of Section 2(5).

II. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer conducts business in the States of Illinois and Missouri. On some past projects, the Employer has entered into project agreements with the Glaziers, which provided for the Employer's compliance with the terms of the Glaziers' contract as well as its securing employees from the Glaziers, but only for the specific project involved at that time. On May 12, 1994, the Employer executed a collective-bargaining agreement with the Iron Workers, effective from August 1, 1993, through July 31, 1996. From a territorial perspective, this Iron Workers' contract is applicable to the Employer's Southern Illinois University (SIU) jobsite. The Employer currently is not party to any agreement with the Glaziers.

In early 1994, the Employer was awarded a sub-contract at the SIU project by Korte Construction, the general contractor, which required the Employer to install curtain walls, aluminum-framed windows, and doors with glass panes, and to perform the attendant glazing. On July 13, 1994, during a prejob conference among all trades with an interest in work at the SIU project, both the Glaziers and the Iron Workers claimed the work which had been awarded to the Employer. This dispute was not resolved at the conference. In August 1994, the Employer's principal, Nancy Nulsen, told Glaziers Business Manager Scimo that she understood that the Glaziers claimed all of the work awarded to the Employer at the SIU site. Scimo responded that the Glaziers were not claiming all of the work, rather just the glass and glazing work.

In both August and December 1994, Scimo told Nulsen that he was going to set up a picket at the SIU jobsite if the glass and glazing work was assigned to the Iron Workers, and that he would send a letter to the general contractor stating that the Glaziers were going to picket the SIU site.

On approximately January 9, 1995,² the Employer commenced work at the SIU site, using two employees represented by the Iron Workers. By letter dated January 27, the Glaziers informed Korte Construction that the Glaziers, having been informed that glazing work would be performed at the SIU site, intended to picket the site and advise the public that employees would be receiving wages and fringe benefits below those which the Glaziers had achieved for its members performing such work. The letter also stated that the sole purpose of the picketing, which was to commence on January 30, was to advise the public of the substandard wages

² All dates hereafter are in 1995, unless otherwise noted.

and benefits, and that the Glaziers were not seeking to induce or encourage any work stoppage.

On January 30 at 7 a.m., the starting time for construction workers on the SIU project, a single individual began picketing the site with a sign imparting an “area standards” message which disclaimed any recognition, bargaining, or jurisdictional object with respect to the picketing. As a result of the picketing, none of the approximately 55 employees at the site reported to work, other than those of the Employer. On January 31, the lone picket appeared again at the site at 7 a.m., but no employees honored the picket line and there was no cessation of work. There has been no further picketing at the site through the date of the instant hearing.

B. Work in Dispute

The disputed work involves glazing and installing glass on the addition to the Music Department Building on the campus of Southern Illinois University, Edwardsville, Illinois.³

C. Contentions of the Parties

The Employer failed to submit a brief in this proceeding, but it appears from the Employer’s testimony at the hearing that it contends that the disputed work should be awarded to employees represented by the Iron Workers on the basis of its collective-bargaining agreement with the Iron Workers, the Employer’s preference and assignment of the work, and economy and efficiency of operations.

The Iron Workers also failed to submit a brief, but it appears from the testimony of the Iron Workers’ business agent at the hearing that the Iron Workers agrees with the Employer, relying particularly on the collective-bargaining agreement and the Employer’s assignment of the work to employees represented by the Iron Workers.

The Glaziers, although served with the notice of 10(k) hearing, did not appear or participate in the proceeding.

D. Applicability of the Statute

Before the Board may proceed with a determination of a 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.

It is undisputed that Glaziers Business Manager Scimo threatened to picket the Employer’s SIU jobsite if the glass and glazing work was assigned to the Iron Workers. Thus, we find reasonable cause to believe

³Although at the hearing the Iron Workers business agent urged a broader scope of the work in dispute, we find that the evidence is insufficient to establish the claim of broader scope.

that an object of the picketing was to secure the work, and that a violation of Section 8(b)(4)(D) has occurred. No party contends that an agreed-on method exists 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. Certifications and collective-bargaining agreements

There is no evidence that the Board has certified either of the Unions involved in this dispute as the collective-bargaining representative of a unit of the Employer’s employees.

The Employer is party to a collective-bargaining agreement with the Iron Workers, effective from August 1, 1993, to July 31, 1996, which covers the work in dispute. Article 2, section 1, of the agreement states that it shall cover all Iron Workers’ work in connection with, inter alia, “all pre-fabricated pre-glazed, pre-hung windows, all raw glass”

The Employer does not have a collective-bargaining agreement with the Glaziers. We find that the factor of collective-bargaining agreements favors an award of the disputed work to employees represented by the Iron Workers.

2. Employer past practice

The Employer in the past has used, on separate projects, employees represented by the Iron Workers and employees represented by the Glaziers to perform the type of work in dispute here. Thus, we find that this factor does not favor an award of the disputed work to either group of employees.

3. Employer preference and assignment

The Employer has assigned the work in dispute to employees represented by the Iron Workers. The Employer has expressed a preference that the work in dispute continue to be performed by employees represented by the Iron Workers. The Employer testified that the employees represented by the Iron Workers have been very capable and have satisfied the Employ-

er's specific expectations and "high demands for perfection" in performing such work, and that the employees represented by the Glaziers "have not been able to prove that to [the Employer]." Accordingly, we find that the factors of employer preference and assignment favor an award of the disputed work to employees represented by the Iron Workers.

4. Area and industry practice

The Employer testified that it is generally aware of the practices of its competitors in southern Illinois and eastern Missouri regarding the type of work in dispute, and that its competitors can utilize employees represented by either the Iron Workers or the Glaziers for this type of work. Thus, we find that this factor does not favor an award of the disputed work to either group of employees.

5. Economy and efficiency of operations

Although the work in dispute consists of glazing and installing glass, the Employer's work at the SIU project also includes curtain walls and aluminum framing. The Employer testified that it has never used employees represented by the Glaziers for aluminum framing and curtain walls, but that it has used employees represented by the Iron Workers for such work and that it has been satisfied with their skills in performing such work. The Employer further stated that given that the work at the SIU project involves aluminum framing, the Employer believes that the SIU project work overall is better handled by the skills possessed by the employees represented by the Iron Workers than by those represented by the Glaziers. Thus, we find that the factor of economy and efficiency of operations favors an award of the work to the employees represented by the Iron Workers.

6. Relative skills

It appears that both the employees represented by the Iron Workers and the employees represented by the Glaziers possess the requisite skills for performing the work in dispute. The Employer testified that the em-

ployees represented by the Iron Workers have been very capable in performing the work in dispute. We find that the factor of relative skills does not favor an award of the disputed work to either group of employees.

Conclusion

After considering all the relevant factors, we conclude that the employees represented by the Iron Workers are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and assignment, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by the Iron Workers, 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.

1. Employees of Pacific Glass and Exteriors, L.L.C. represented by International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 392, AFL-CIO are entitled to perform the work of glazing and installing glass on the addition of the Music Department Building at Southern Illinois University, Edwardsville, Illinois.

2. Glaziers, Architectural, Metal and Glassworkers, Local No. 513, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Pacific Glass and Exteriors, L.L.C. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Glaziers, Architectural, Metal and Glassworkers, Local No. 513, AFL-CIO shall notify the Regional Director for Region 14 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.