

**International Longshoremen's and Warehousemen's Union, Local 14 and Sierra Pacific Industries.**  
Case 20-CD-696

August 24, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Upon a charge filed February 11, 1994, by Sierra Pacific Industries (the Employer) and duly served on International Longshoremen's and Warehousemen's Union, Local 14 (the Respondent), the General Counsel of the National Labor Relations Board issued a complaint October 25, 1994, and an amended complaint April 20, 1995, against the Respondent, alleging that it had violated Section 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act.

The amended complaint alleges that since about November 29, 1993, and January 11, 1994, the Respondent has demanded that the Employer assign the work of controlling the amount of wood chips transported on the conveyor belt and controlling the speed of the conveyor belt, which is known as "button man" work, at the 14th Street Dock in Eureka, California (the disputed work), to employees who are members of or represented by the Respondent, rather than to the Employer's unrepresented employees. The amended complaint also alleges that from about February 10 to about March 15, 1994, the Respondent, in furtherance of its claim, picketed the Employer's facility with signs stating:

SIERRA PACIFIC UNFAIR TO ILWU  
INTERNATIONAL LONGSHOREMEN'S &  
WAREHOUSEMEN'S UNION.

The amended complaint further alleges that by such conduct the Respondent induced or encouraged individuals employed by Sierra Pacific Industries and other persons engaged in commerce or in an industry affecting commerce to refuse to handle or work on goods and to refuse to perform services, and threatened, coerced, and restrained the Employer and other persons engaged in commerce or in industries affecting commerce. The amended complaint further alleges that the Respondent has failed and refused to comply with the Board's August 24, 1994 Decision and Determination of Dispute,<sup>1</sup> which awarded the disputed work to the Employer's unrepresented employees, by failing to notify the Regional Director for Region 20 in writing that it will refrain from forcing the Employer by means

<sup>1</sup> *Longshoremen ILWU Local 14 (Sierra Pacific Industries)*, 314 NLRB 834 (1994).

proscribed by Section 8(b)(4)(D) to assign the disputed work in a manner inconsistent with the Board's Order.

On April 27, 1995, the Respondent filed an answer, admitting in part and denying in part the allegations in the amended complaint, denying the commission of any unfair labor practices, and asserting affirmative defenses. Specifically, the Respondent asserts as affirmative defenses that the facts of the underlying 10(k) determination do not fall within the scope of Sections 10(k) and 8(b)(4)(D), and that the Board's Decision and Determination of Dispute in the underlying 10(k) proceeding is arbitrary and capricious. The Respondent's answer admits its failure and refusal to notify the Regional Director in writing of its intention to comply with the Board's determination, but asserts that it has failed and refused to do so in order to obtain court review of the Board's Decision and Determination of Dispute. Furthermore, the Respondent admits in its answer that, since about November 29, 1993, and January 11, 1994, it has demanded that the Employer assign the disputed work to employees represented by the Respondent rather than to the Employer's unrepresented employees.

As of May 16, 1995, the parties entered into a stipulation and moved to transfer the proceeding to the Board. The parties agreed that the stipulation and attached exhibits, including the charge in Case 20-CD-696, the 10(k) hearing transcript and exhibits in Case 20-CD-696, the Decision and Determination of Dispute in Case 20-CD-696, the complaint, the answer to the complaint, the amended complaint, and the answer to the amended complaint, constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties. They waived a hearing, the making of findings of fact and conclusions of law by an administrative law judge, and the issuance of an administrative law judge's decision, and submitted the case for findings of fact, conclusions of law, and issuance of an appropriate order directly to the Board.

On June 22, 1995, the Board approved the stipulation, made it a part of the record, and transferred to and continued the proceeding before the Board for the purpose of making findings of fact and conclusions of law, and for the issuance of a decision and order. Thereafter, the Respondent and the Employer filed briefs with the Board.

The Board has considered the stipulation, the briefs, and the entire record, and makes the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, a California corporation with an office and place of business in Eureka, California, including a dockside facility, is engaged in the manufacture of lumber and wood products. During the calendar year ending December 31, 1993, the Employer sold

and shipped from its Eureka, California facility goods valued in excess of \$50,000 directly to points outside the State of California. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction.

## II. THE LABOR ORGANIZATION

We find that International Longshoremen's and Warehousemen's Union, Local 14 is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. *Facts*

On November 29, 1993,<sup>2</sup> when the first barge arrived at the 14th Street Dock to be loaded with wood chips, the Respondent picketed outside the gate to the dock with signs reading "Unfair to the ILWU." In a meeting that day with Andy Westfall and Ed Bond, the Employer's human resources manager and manager of corporate affairs, the Respondent's officials said that loading chips was their jurisdiction and that the Respondent wanted the work.

Each subsequent time the barges were loaded,<sup>3</sup> the Respondent picketed outside the gate to the dock. On February 10, there were 30-40 pickets at the gate, some with signs saying "Sierra Pacific unfair to ILWU." Additionally, there were four or five picket boats in the harbor, each with signs and two pickets on board. The picket boats interfered with tugboat and barge activity. Later that day, the Respondent gave Ed Bond a press release which stated in part, "[T]he work of loading the Barges is ours."

During the time period from October through February, the Employer's officials met on numerous occasions with Andy Westfall and the Respondent's officials to discuss resolving the matter. During these meetings, the Respondent maintained its position that the work of loading wood chips onto barges was the Respondent's work. The Employer maintained its position that the Respondent's staffing requirements would make the Employer's operation too expensive. On February 11, the Employer filed an 8(b)(4)(D) charge against the Respondent in Case 20-CD-696.

On August 24, 1994, after conducting a hearing pursuant to Section 10(k) of the Act, the Board issued its

<sup>2</sup> All dates are in 1993 or early 1994, unless otherwise specified.

In October and November, Andy Westfall, an owner of Westfall Stevedoring Co., and the Employer's officials had numerous discussions concerning the possibility of the Employer's subcontracting the chip-loading work to Westfall. Andy Westfall told the Employer's officials that his employees, represented by Local 14, performed the chip-loading work across the bay at the Louisiana-Pacific Samoa facility. He said that Local 14 was demanding the Employer's chip-loading work.

<sup>3</sup> Barges were loaded December 8, 18, and 28; January 2, 5, 10, 14, 21, 27, and 28; and February 3 and 11.

Decision and Determination of Dispute. The Board stated therein that it was undisputed that there was no agreed-upon method for voluntary adjustment of the work dispute.

Further, it was undisputed that the Respondent picketed the Employer's facility and the Board found that such picketing was in support of the Respondent's demand for the button man work. The Board found that the Employer's assignment of the button man work to its unrepresented employees was an original assignment of new work at a new location, and that the Respondent's claim to the button man work was an attempt to acquire new work, not preserve old work. Thus, the Board concluded that there was reasonable cause to believe that Section 8(b)(4)(D) of the Act had been violated.

Accordingly, the Board concluded that the dispute was properly before it for determination and, based on the factors of employer preference and practice, and economy and efficiency of operations, the Board awarded the work in dispute to the employees of Sierra Pacific Industries who are not represented by any labor organization. The Board also found, *inter alia*, that the Respondent was not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force Sierra Pacific Industries to assign the work to employees it represented. The decision further directed the Respondent to notify the Regional Director for Region 20, in writing, within 10 days, whether it would refrain from the proscribed action. The Respondent has failed and refused to comply with the Board's Decision and Determination of Dispute.

### B. *Discussion*

The Respondent, in its brief, contends that the Board erred in the first instance by making a determination in the 10(k) proceeding because there is no evidence of competing claims between rival groups of employees; rather, the Respondent argues, the dispute is between the Respondent and the Employer. In that regard, the Respondent argues that the record contains no evidence that the Employer's unrepresented employees have any interest in performing the disputed work. The Respondent contends further that the dispute involved in this case is a work preservation controversy, which is outside the scope of Sections 10(k) and 8(b)(4)(D) of the Act, and that it engaged in lawful picketing in furtherance of its work preservation claim. The Respondent asserts that the Employer "itself precipitated the instant dispute by diverting its wood chips and effectively reassigning traditional longshore work performed by Local 14 to its own employees," and that the Respondent has the right to protest this loss of work opportunities. Finally, the Respondent asserts that, even assuming the Board had jurisdiction under Section 10(k) to make a determination,

the Board's decision on the merits of this dispute was arbitrary and capricious because every factor traditionally considered by the Board in determining such disputes favors awarding the button man work to employees the Respondent represents.

We find no merit in the Respondent's contentions because they raise arguments previously considered and rejected by the Board. Because all material allegations either have been admitted by the Respondent in its answer, or have been decided previously by the Board, there are no matters outstanding for resolution.

Having determined that the Respondent has not complied with the Board's 10(k) determination, the merits of the complaint concerning whether the Respondent has engaged in conduct violative of Section 8(b)(4)(D) of the Act must be examined. We note that the Respondent's failure to comply with the Board's 10(k) determination does not per se constitute a violation of Section 8(b)(4)(D). Rather, noncompliance merely triggers a complaint alleging that a violation of Section 8(b)(4)(D) has occurred.<sup>4</sup> Once the complaint has issued "in the Section 8(b)(4)(D) proceeding itself, the Board must find by a preponderance of the evidence that the picketing union has violated Section 8(b)(4)(D)."<sup>5</sup> All the factors essential for a finding of such a violation are present in the instant case. As set forth above, the Respondent picketed the Employer; by such conduct, the Respondent induced and encouraged the Employer's employees and employees of other persons engaged in commerce or in an industry affecting commerce to refuse to handle or work on goods and to refuse to perform services, and has threatened, coerced, and restrained the Employer and other persons engaged in commerce or in an industry affecting commerce; an object of the picketing was to force and require the Employer to assign the button man work to members of the Respondent rather than to the Employer's unrepresented employees; and the Respondent has not been certified by the Board as the collective-bargaining representative of the employees performing the button man work, nor has the Board issued any order determining that the Respondent is the bargaining representative of these employees. With respect to the Respondent's "work preservation" defense, the Board rejected that defense in its prior decision. Concededly, that decision was based on the standard of "reasonable cause to believe." Based on the same facts, however we now reach the same conclusion under the standard of "preponderance of the evidence." In sum, the evidence shows that the Respondent was seeking new work, not seeking to preserve old work. On the basis of the foregoing and the entire record in this proceeding, we find by a preponderance of the evidence that

the Respondent violated Section 8(b)(4)(i) and (ii)(D) of the Act.

#### CONCLUSIONS OF LAW

1. Sierra Pacific Industries is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent International Longshoremen's and Warehousemen's Union, Local 14 is a labor organization within the meaning of Section 2(5) of the Act.

3. By picketing the Employer, an object of which was to force or require the Employer to assign the button man work at the 14th Street Dock in Eureka, California, to employees represented by the Respondent, rather than to the Employer's unrepresented employees, the employees represented by the Respondent not being lawfully entitled to that work, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

4. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices, we shall order it to cease and desist therefrom and to take affirmative actions designed to effectuate the purposes of the Act.

#### ORDER

The National Labor Relations Board orders that the Respondent, International Longshoremen's and Warehousemen's Union, Local 14, Eureka, California, its officers, agents, and representatives, shall

1. Cease and desist from picketing Sierra Pacific Industries, the object of which is to force or require Sierra Pacific Industries to assign the button man work at the 14th Street Dock in Eureka, California, to employees represented by the Respondent, rather than to the Employer's unrepresented employees, except insofar as such conduct is permitted under Section 8(b)(4)(i) and (ii)(D) of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its office and meeting halls copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for

<sup>4</sup>*Longshoremen ILWU Local 6 (Golden Grain)*, 289 NLRB 1 fn. 3 (1988).

<sup>5</sup>*NLRB v. Plasterers Local 79*, 404 U.S. 116, 122 fn. 10 (1971).

<sup>6</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of the notice to the Regional Director for Region 20 for posting by Sierra Pacific Industries, if it is willing, in all places where notices to its employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT picket Sierra Pacific Industries with an object of forcing or requiring Sierra Pacific Industries to assign the button man work at the 14th Street Dock in Eureka, California, to employees represented by International Longshoremens' and Warehousemens' Union, Local 14, rather than to the unrepresented employees of Sierra Pacific Industries, except insofar as such conduct is permitted under Section 8(b)(4)(i) and (ii)(D) of the Act.

INTERNATIONAL LONGSHOREMEN'S AND  
WAREHOUSEMEN'S UNION, LOCAL 14