

**Ceramic Tile Layers and Terrazzo Workers Union  
Local 67, BAC and Fisher & Reid Tile Co.,  
Inc.**

**Local No. 25 Tile Helpers Union BAC and Fisher  
& Reid Tile Co., Inc.**

**Tile, Marble, Terrazzo, Finishers, Shopworkers and  
Granite Cutters Local 98T, UBCJA<sup>1</sup> and Fisher  
& Reid Tile Co., Inc.** Cases 13-CD-504, 13-  
CD-505, and 13-CD-506

August 25, 1995

DECISION AND DETERMINATION OF  
DISPUTE

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND TRUESDALE

The charges in this Section 10(k) proceeding were filed October 26, 1994, by Fisher & Reid Tile Co., Inc., the Employer. The charges in Cases 13-CD-504 and 13-CD-505 allege that the Respondents, Ceramic Tile Layers and Terrazzo Workers Union Local 67, BAC (Local 67) and Local No. 25 Tile Helpers Union BAC (Local 25) each 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 represented by them rather than to employees of the Employer represented by Tile, Marble, Terrazzo, Finishers, Shopworkers and Granite Cutters Local 98T, UBCJA (Local 98T). The charge in Case 13-CD-506 alleges that Respondent Local 98T violated Section 8(b)(4)(D) by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees represented by it rather than to employees represented by Local 67 and Local 25. The hearing was held on January 4, 5, and 6, and February 2, 3, and 4, 1995, before Hearing Officer Mary Ellen LaCien. Thereafter, the Employer, Local 67, Local 25, and Local 98T each filed a brief in support of its positions.<sup>2</sup>

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.

<sup>1</sup> The Respondents' names have been amended as stipulated at the hearing.

<sup>2</sup> After the filing of briefs, Local 98T filed a motion to reopen the record to submit certain documents involving a work dispute with a different employer. Local 67 and Local 25 oppose the motion. Local 98T has not demonstrated the relevance of these documents to the instant proceeding, and we ascertain none. Accordingly, the motion is denied.

I. JURISDICTION

The Employer is engaged in part in the business of installation of commercial tile. Within the calendar year preceding January 1995, a representative period, it purchased tile and related products valued in excess of \$50,000 from a supplier located within the State of Illinois, which supplier purchased and received those products directly from sources located outside the State of Illinois. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that Local 67, Local 25, and Local 98T are, as stipulated by the parties, labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

*A. Background and Facts of Dispute*

The work involved in this jurisdictional dispute is the setting and finishing of "hard" or ceramic tile in the building and construction industry.<sup>3</sup> As a matter of brief factual background, it is notable that beginning in the mid-1980's in the Chicago metropolitan area, there was a prolonged dispute over the representation of tile finishing workers between the Tile, Marble, Terrazzo, Finishers and Shopworkers International Union (TMT) and the International Union of Bricklayers and Allied Craftsmen (Bricklayers). Over a period of time, what formerly had been Local 25 of TMT became what is now Respondent Local 25 of Bricklayers, with most of the local membership—tile finishing workers—effectively shifting from the one international union to the other. TMT merged with the United Brotherhood of Carpenters and Joiners of America (Carpenters) and what was left of TMT Local 25, consolidated with TMT Local 98, became what is now Respondent 98T of the Carpenters. Respondent Local 98T began efforts to represent tile setters as well as tile finishers. In the Chicago area, tile setters traditionally have been represented by Local 67 of the Bricklayers. Thus, by 1994, when the instant dispute arose, Respondent Local 25 represented tile finishers, Respondent Local 67 represented tile setters, and Respondent Local 98T represented tile finishers *and* tile setters, and, predictably, jurisdictional disputes involving the three locals and various employers had occurred as a result.

The Employer is a relatively small tile setting and finishing contractor. It has about four employees performing this work, all of whom are members of Local 98T. The Employer has a collective-bargaining agreement with Local 98T. On October 26, 1994, it filed charges alleging 8(b)(4)(D) violations against all three Respondents in this case. The Employer's contentions

<sup>3</sup> The Employer is also engaged in "soft" tile setting, but such work is not involved in the instant dispute.

encompass alleged unlawful conduct reaching back to 1993.

About August 1993, the Employer was working on a contract at the Yorktown Mall in the Chicago area. Representatives of Respondents Local 67 and Local 25 appeared at the worksite and claimed the Employer's tile setting and tile finishing work. In particular, Edward Miller, the Local 25 representative, stated that the Employer would not do any more jobs "in Cook County" and that he would file jurisdictional claims against the Employer wherever it worked with Local 98T-represented employees. Some evidence was also submitted indicating that in one instance Miller may have vandalized building material owned by the Employer.

In September 1994, the Employer was working on a contract at the Woodfield Mall in the Chicago area. Edward Juergensen, a Local 67 representative, appeared and, claiming the tile setting work, he stated that Local 67 would follow the Employer from job to job and file jurisdictional claims. Both Local 67 and Local 25 did file a jurisdictional claim with the Cook County Joint Conference Board (JCB) concerning the Employer's tile work at the Woodfield Mall. Although invited, neither the Employer nor Local 98T participated in the JCB hearing. On September 21, 1994, the JCB issued a determination awarding the tile setting work at the Employer's Woodfield Mall job to Local 67 and the tile finishing work to Local 25. The Employer did not comply with the award. Subsequently, Juergensen again appeared at the Woodfield Mall worksite, and, with the JCB award in hand, claimed the tile setting work. It is apparent that Juergensen later was asked to leave the site by mall security personnel, but the reason for the request is not established in the record.

In October 1994, the Employer was working on a tile contract at the Old Orchard Mall in Skokie, Illinois, in the Chicago area. On October 12, Miller of Local 25 and Juergensen of Local 67 came to the worksite and asked to see the union cards of the Employer's employees. The Employer contacted Emil Quaglia, a representative of Local 98T, who appeared at the site. Miller and Juergensen claimed the tile setting and tile finishing work that the Employer's Local 98T-represented employees were performing. Juergensen asserted that the JCB award concerning the Woodfield Mall job was proof that the tile setting work at *this* job must also be assigned to Local 67-represented employees. Quaglia and Juergensen had a heated discussion; Robert Fisher, a tile setter and an official of the Employer, overheard Quaglia tell Juergensen that if Local 98T lost the tile setting and finishing work, he would strike the Employer and picket the

job.<sup>4</sup> The Employer completed its work at the Old Orchard Mall in the first week of November 1994.

### B. *Work in Dispute*

The Regional Director's notice of hearing defined the instant dispute as involving tile setting and tile finishing work at the Old Orchard Mall, "and all other places in northern Illinois where the jurisdictions of Tile, Marble and Terrazzo Workers Local 98T, UBCJA, Tile Helpers Local 25, BAC and Ceramic Tile Layers Local 67, BAC coincide." However, as explained below, we find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated only at the Employer's worksite at the Old Orchard Mall. Accordingly, this dispute is limited to the Employer's tile setting and finishing work at that worksite.

### C. *Contentions of the Parties*

The Employer and Respondent Local 98T argue that all three Respondents have violated Section 8(b)(4)(D) in light of the incidents at the Yorktown Mall, the Woodfield Mall, and the Old Orchard Mall, and in light of the JCB grievance filed by Respondents Local 67 and Local 25. They also contend that there is no method for the voluntary adjustment of this dispute to which all the parties have consented to be bound. They further contend that based on the factors of collective-bargaining agreements, past practice and the employer's preference, economy and efficiency, and relative skills, the disputed work should be awarded to the employees represented by Respondent Local 98T. Finally, they argue that a broad, areawide award is appropriate in the circumstances of this case.

Respondent Local 25 and Respondent Local 67 argue that the Regional Director's notice of hearing should be quashed because there is not sufficient evidence of reasonable cause to believe that Section 8(b)(4)(D) has been violated by *any* of the Respondents.<sup>5</sup> They also argue for quashing the notice because the JCB process provides an alternative method for the voluntary adjustment of this jurisdictional dispute. They further contend that, alternatively, the factors of prior jurisdictional dispute awards, economy and efficiency, relative skills, and area practice favor an award of the tile setting work to Local 67 and the tile finishing work to Local 25. They also argue that an areawide award is not appropriate in this case.

<sup>4</sup> Quaglia testified that Juergensen stated that Local 67 would picket the job as well, but there is no evidence that the Employer heard Juergensen's statement or later heard about it, if in fact it was made.

<sup>5</sup> Respondent Local 25 also contends that in any event the notice of hearing should be quashed because there is no reasonable cause to believe that *it* violated Sec. 8(b)(4)(D).

#### 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.

1. With respect to an alternative method of adjusting this dispute, Respondent Locals 67 and 25 argue that all three Respondents and the Employer are within the jurisdiction of the JCB and that therefore the JCB's authority to resolve jurisdictional disputes provides an appropriate alternative procedure for disposing of the instant case. It is undisputed that Local 67 and Local 25 are bound by the authority of the JCB. Local 67 and Local 25 assert that Local 98T is similarly bound, based on, *inter alia*, its affiliation with the Chicago and Cook County Building and Construction Trades Council. (The Trades Council, together with the Construction Employers Association, authorize the existence and operation of the JCB by agreement.) Local 25 and Local 67 further contend that the JCB's jurisdiction over the Employer is mandated by the Trades Council's constitution and bylaws, which assertedly indicate that employers which have collective-bargaining agreements with unions affiliated with the Trades Council agree to abide by the authority of the JCB. Thus, according to Local 25 and Local 67, the Employer is under the jurisdiction of the JCB by virtue of its collective-bargaining agreement with Local 98T.

The assertion that the Trades Council's constitution and bylaws require the Employer's compliance with the authority of the JCB does not establish that the Employer has in fact agreed to be so bound. The Employer's collective-bargaining agreement with Local 98T was not negotiated on the Employer's behalf by the Construction Employers Association, and the Employer is not a member of that association. There is nothing in the Employer's collective-bargaining agreement with Local 98T nor any other evidence which indicates that the Employer has consented to submit to the JCB's jurisdiction. Thus, even were we to assume that *Local 98T* is bound by the JCB's dispute determinations, there is insufficient evidence that the Employer has consented to be bound. See, e.g., *Plasterers Local 502 (Advance Terrazzo)*, 272 NLRB 810, 811 (1984).

2. Regarding the question of whether there is reasonable cause to believe that a violation has occurred, the unfair labor practice charges the Employer filed on October 26, 1994, allege that all three of the Respondent Locals engaged in conduct violating Section 8(b)(4)(D). As set forth below, however, we find that the "reasonable cause" standard has been satisfied only with respect to Respondent Local 98T.

The Yorktown Mall matter occurred, as alleged, in August 1993. Because this was well before the 6-month limitation period for filing charges under Section 10(b), we do not pass on the substance of any unfair labor practice allegations against Local 25 or Local 67 regarding that location, and we find it unnecessary to consider this matter further in evaluating the "reasonable cause" question in this case.

With regard to the Employer's Woodfield Mall job in September 1994 and its Old Orchard Mall job in October 1994, it is clear that the evidence supporting the allegations of 8(b)(4)(D) conduct against Local 67 and Local 25 consists of their threats to file jurisdictional grievances with the JCB, their filing of such a grievance, and their claims on the work in dispute in connection with the JCB grievance procedure. Thus, at the Woodfield Mall, Juergensen of Local 67 claimed the tile setting work and threatened to file jurisdictional claims wherever the Employer did tile setting work with its Local 98T-represented employees. In fact, both Local 67 and Local 25 did file a jurisdictional dispute claim with the JCB and received an award in their favor. Juergensen then returned to the worksite, reinforced by the JCB award, to claim the tile setting work again. At the Old Orchard Mall on October 12, it is apparent that the work claim of Local 67, if not that of Local 25 as well, related to the prior JCB award.

We find that the activity of Local 67 and Local 25 before the JCB, and any threats and statements relating to such activity, involved an arguably meritorious work-assignment grievance prior to any 10(k) determination by the Board. Conduct of this kind does not violate Section 8(b)(4)(D). See *Longshoremens ILWU Local 7 (Georgia Pacific)*, 291 NLRB 89 (1988), *affd.* sub nom. *Georgia-Pacific Corp. v. NLRB*, 892 F.2d 130 (D.C. Cir. 1989); *Brockton Newspaper Guild (Enterprise Publishing)*, 275 NLRB 135 (1985). We note that, as found above, the Employer is not in fact bound by the JCB procedure because it has not consented to it. However, Local 67's and Local 25's assertion that, under the Trades Council's constitution and bylaws, the Employer is subject to the JCB's jurisdiction because of its collective-bargaining agreement with Local 98T is sufficient to meet the "arguably meritorious" standard. That the JCB found merit in their grievance further establishes the "arguably meritorious" nature of their claim. See *Georgia Pacific*, *supra* at 93. Accordingly, we conclude that the record does not provide adequate evidence of reasonable cause to believe that Local 67 and Local 25 violated Section 8(b)(4)(D).

Concerning Respondent Local 98T, however, we conclude that the evidence is sufficient to find reasonable cause to believe that Section 8(b)(4)(D) was violated. On October 12, 1994, at the Old Orchard Mall

worksites, during an argument with Juergensen, Quaglia of Local 98T stated, and was overheard by the Employer, that his Local would strike the Employer and picket the worksite if the tile setting and finishing work were reassigned. This is coercive conduct within the meaning of Section 8(b)(4)(D).<sup>6</sup>

In sum, there is reasonable cause to believe that Respondent Local 98T has violated Section 8(b)(4)(D) of the Act. In addition, we have found that there is no agreed-upon method binding all the parties to a voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Therefore, 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. Collective-bargaining agreements<sup>7</sup>

It is undisputed that the Employer has a collective-bargaining agreement with Local 98T which covers the tile setting and tile finishing work at issue. We find that this factor favors an award of the work to employees represented by Local 98T.

##### 2. Employer preference and past practice

The Employer's practice has been to assign the disputed work to its employees represented by Local 98T. The Employer's stated preference is to continue such assignments. Accordingly, this factor favors an award of the disputed work to the Local 98T-represented employees.

##### 3. Area and industry practice

It is undisputed that in the Chicago metropolitan area the practice established by unionized contractors has been to assign tile setting work to employees rep-

<sup>6</sup>We decline to quash the notice of hearing because we conclude that there is reasonable cause to believe that Respondent Local 98T violated Sec. 8(b)(4)(D). However, because we would have quashed the notice had it issued only against Respondent Local 25 and Respondent Local 67, we refer their motions to quash with respect to Cases 13-CD-504 and 13-CD-505 to the Regional Director, who must take the same action that would have been required had the Board in fact quashed the notice of hearing. See *Laborers (Vernon Construction)*, 298 NLRB 797 fn. 4 (1990).

<sup>7</sup>There is no record evidence concerning any Board certifications relevant to the determination of this dispute.

resented by Local 67 and tile finishing work to employees represented by Local 25. We find that this factor favors an award of the disputed work to employees represented by Local 67 and Local 25.

##### 4. Economy and efficiency of operations

Work rules governing Local 67's relationships with contractors require that Local 67-represented employees perform only tile setting work; similarly, work rules governing Local 25's employment relationships limit Local 25-represented employees to performing tile finishing work exclusively. On the other hand, employees represented by Local 98T perform *both* tile setting and tile finishing work for the Employer. The Employer asserts that, as a small contractor, the functional flexibility that this affords makes the Employer's operation more efficient and economical because its employees are each able to be given a wider variety of work assignments. We find that the economy and efficiency factor favors an award of the disputed work to Local 98T-represented employees.

##### 5. Relative skills

The evidence indicates that the Local 98T-represented workers employed by the Employer have tile setting and tile finishing skills which are more than adequate for the Employer's purposes. The evidence also indicates that Local 25 and Local 67 are able to supply sufficiently skilled workers in the tile setting and finishing trade. In addition, Local 25 and Local 67 operate tile trade apprenticeship programs to maintain a supply of skilled workers in the area. Witnesses for Local 98T testified that Local 98T intends to establish an apprenticeship program in the tile trade in the future.

We find that the relative skills factor does not favor an award of the disputed work to Local 98T-represented employees or to employees represented by Locals 67 and 25.

##### 6. Prior jurisdictional dispute determinations

Local 25 and Local 67 contend that two prior jurisdictional dispute determinations indicate that an award of the work in the instant case should be made to employees represented by them. The first involved a determination by the DuPage County (Illinois) Arbitration Board in September 1991 awarding tile setting work to Local 67-represented employees (and, assertedly, awarding tile finishing work to Local 25-represented employees) rather than awarding the work to employees represented by Local 98T. This determination did not involve the Employer and there is no analysis in support of the award on this record. The second award involved the JCB's September 21, 1994 determination of the claim filed by Locals 25 and 67 concerning the Employer's Woodfield Mall job. As set

forth above, the JCB awarded the setting and finishing work to employees represented by Locals 67 and 25 rather than to Local 98T-represented employees. Although the JCB determination related to work performed by the Employer, there is no supporting analysis for the award on this record, and the determination is limited to the Woodfield Mall worksite.

In light of the above, we find that the evidence in support of this factor does not favor an award of the disputed work to employees represented by Locals 67 and 25 or to Local 98T-represented employees. See, e.g., *Iron Workers Local 1 (Fabcon)*, 311 NLRB 87, 92–93 (1993); *Iron Workers Local 395 (Calumet Flexicore)*, 288 NLRB 25, 27–28 (1988).

#### Conclusions

After considering all the relevant factors, we conclude that the Employer's employees represented by Local 98T are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, and economy and efficiency of operations. In making this determination, we are awarding the work to the Employer's employees represented by Local 98T, not to that Union or its members.

#### Scope of the Award

The Employer and Local 98T have requested a broad work award, apparently covering a large seg-

ment of northern Illinois where the jurisdictions of Local 98T, Local 67, and Local 25 coincide. We find a broad award inappropriate in this case. The Union which we have found reasonable cause to believe has engaged in 8(b)(4)(D) coercion is Local 98T, and it is to the employees represented by Local 98T that we are awarding the disputed work and to whom the Employer wishes to continue to assign it. We have found no reasonable cause to believe that either Local 25 or Local 67 has engaged in activity in violation of Section 8(b)(4)(D). In such circumstances, the Board has declined requests for areawide awards. See, e.g., *Laborers (Harris Masonry)*, 303 NLRB 313, 315 (1991); see also *Electrical Workers IBEW Local 104 (Standard Sign)*, 248 NLRB 1144, 1147–1148 (1980). Accordingly, our 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 Fisher & Reid Tile Co., Inc., represented by Tile, Marble, Terrazzo, Finishers, Shopworkers and Granite Cutters Local 98T, UBCJA, are entitled to perform tile setting and tile finishing work at the Employer's jobsite at the Old Orchard Mall, Skokie, Illinois.