

**Laborers International Union of North America,
Local No. 1086, AFL-CIO and Miron Con-
struction Co., Inc. and International Union of
Operating Engineers, Local No. 139, AFL-CIO
and Par Construction Co., Inc. Case 30-CD-
147**

December 18, 1995

**DECISION AND ORDER QUASHING NOTICE
OF HEARING**

**BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN**

The charge in this Section 10(k) proceeding was filed December 29, 1992, by Miron Construction Co., Inc., alleging that the Respondent, Laborers International Union of North America, Local No. 1086, AFL-CIO, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Miron to require its subcontractor, Par Construction Co., Inc. to continue to assign certain work to employees represented by Local 1086 rather than to employees represented by International Union of Operating Engineers, Local No. 139, AFL-CIO. A hearing was held on February 16 and March 29, 1993, before Hearing Officer Janice K. Gifford. Miron, Local 1086, and Local 139 filed posthearing briefs.

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

FINDINGS OF FACT

I. JURISDICTION

Par Construction Co., Inc., a Wisconsin corporation, is a construction firm with its principal office in Malone, Wisconsin. During the past calendar year, a representative period, Par purchased and received goods, materials, and services valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin.

Miron Construction Co., Inc., a Wisconsin corporation, is a construction firm with its principal office in Menasha, Wisconsin. During the past calendar year, a representative period, Miron purchased and received goods, materials, and services valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin.

The parties stipulated, and we find, that Par Construction Co., Inc. and Miron Construction Co., Inc. are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 1086 and Local 139 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

Sometime in 1992, general contractor Miron was awarded the contract on the Kettle Moraine Correctional Facility project in Sheboygan, Wisconsin. In May 1992, Miron engaged Par, the Employer, as a masonry subcontractor on the project. The Employer assigned the operation of three mason-tending forklifts to employees represented by Local 1086. Miron has collective-bargaining agreements with Local 1086 and with Local 139.

On June 26, 1992, Local 139 filed a grievance against Miron, alleging that Miron had "subcontracted bargaining unit work covered by the . . . Agreement to a subcontractor not signatory to that agreement." The grievance sought payment for the work assigned to employees represented by Local 1086.¹ On August 5, 1992, the Wisconsin Laborers District Council sent Miron a letter opposing any reassignment of or payment to another trade for the mason-tending forklift work. Local 1086 sent a letter to Miron, dated December 14, 1992, advising Miron that it would "take all steps necessary to preserve the assignment . . . [and] will strike and picket to maintain the work assignment" if Miron reassigned the work to Local 139 or any other trade.

B. Work in Dispute

The disputed work involves the operation of mason-tending forklifts at the Kettle Moraine Correctional Facility project in Sheboygan County, Wisconsin.

C. Contentions of the Parties

Both Miron and the Employer contend that the mason-tending forklift work should be awarded to employees represented by Local 1086, based on employer preference and past practice, economy and efficiency, area practice, and collective-bargaining agreements.

Local 1086 also contends that both Miron and the Employer prefer to have employees whom it represents perform the mason-tending forklift work. It argues that this factor, economy and efficiency of operations, area and industry practice, and relative skills, require an award of the work to employees it represents. Local 1086 seeks a broad award covering the work in dispute at all jobsites of the Employer within the common geographic jurisdiction of Local 1086 and Local 139.

Local 139 contends that no jurisdictional dispute exists. It states that its contractual grievance against Miron for allegedly violating the subcontracting clause of its labor agreement did not constitute a claim to the

¹ The contract between Miron and Local 139 provides that Miron will subcontract work "only to a subcontractor who has signed, or is otherwise bound by, a written labor agreement entered into with [Local 139]."

work in dispute and that it did not engage in conduct that could be construed as coercive and thus did not violate Section 8(b)(4)(D) of the Act. Local 139 also argues that Miron's charge against Local 1086 is the result of collusion. If the Board finds that a jurisdictional dispute exists, Local 139 maintains that the factors of economy and efficiency, collective-bargaining agreements, area and industry practice, Miron's past practice, relative skills, and an agreement of the International Unions in 1954 favor an award of the work in dispute to employees it represents. Finally, Local 139 contends that if the Board proceeds on the merits of the case, its determination should be confined to the facts of the instant case.

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 Board requires that there is reasonable cause to believe (1) that a party has used proscribed means to enforce its claims to the work in dispute and (2) that there are competing claims to the disputed work between rival groups of employees. The first part of the standard is satisfied in this case because it is undisputed that Local 1086 threatened to strike and picket if Miron reassigned the work to employees represented by Local 139 or any other trade union. We find, however, that the second prong of this test was not met.

In *Laborers (Capitol Drilling Supplies)*,² the Board overturned precedent and announced a new rule:

. . . in the construction industry, a union's action through a grievance procedure, arbitration, or judicial process, to enforce an arguably meritorious claim against a general contractor that work has

been subcontracted in breach of a lawful union signatory clause, does not constitute a claim to the subcontractor for the work, provided that the union does not seek to enforce its position by engaging in or encouraging strikes, picketing, or boycotts or by threatening such actions.

Thus, in cases of this kind, the Board will no longer find that there are competing claims to disputed work. Local 139 filed a grievance against Miron, the general contractor, for allegedly violating their labor agreement which limits subcontracting to those employees "bound[,] by a written labor agreement entered into with [Local 139]." Local 139 never engaged in any dispute with Par, the subcontractor. Moreover, Local 139 did not seek to enforce its position by either threatening to, or actually, picketing, striking, or boycotting. Therefore, under the rule set forth in *Laborers (Capitol Drilling Supplies)*, supra, we find that there are no competing claims to the disputed work between rival groups of employees. Therefore, we will quash the notice of hearing.

ORDER

It is ordered that the notice of hearing issued in this case is quashed.

MEMBER COHEN, dissenting.

I would not quash the notice of hearing in this case. There is reasonable cause to believe that there is a violation of Section 8(b)(4)(D): Respondent Local 1086 threatened to strike and picket if the work were reassigned to Local 139. The majority contend, however, that there is no competing claim to the work because Local 139 has only filed a grievance. For the reasons set forth in my dissent in *Laborers (Capitol Drilling Supplies)*,¹ I find that there is reasonable cause to believe that the grievance is a competing claim. I would, therefore, proceed to an award of the work in dispute.

² 318 NLRB 809 (1995).

¹ 318 NLRB 809 (1995).