

**Glaziers, Architectural Metal and Glass Workers
Local No. 558 and DiCarlo Construction Com-
pany and Royal Remodeling and Ironworkers
Local Union No. 10, AFL-CIO.** Case 17-CD-
347

April 30, 1996

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

The charge in this Section 10(k) proceeding was filed on November 13, 1995, by DiCarlo Construction Company (DiCarlo) and Royal Remodeling (Royal), alleging that the Respondent, Glaziers, Architectural Metal and Glass Workers Local No. 558 violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer (Royal) to assign certain work to employees it represents rather than to employees represented by Ironworkers Local Union No. 10, AFL-CIO. A hearing was held on December 15, 1995, before Hearing Officer D. Michael McConnell.¹

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

DiCarlo is a State of Missouri partnership engaged as a general contractor in the construction industry. The Employer annually purchases and receives goods and services valued in excess of \$50,000 from sources located outside the State of Missouri, and annually sells and ships goods and services valued in excess of \$50,000 directly to customers located outside the State of Missouri.

Royal is a sole proprietorship engaged as an installer of skylights. The Employer annually purchases and receives goods and services valued in excess of \$50,000 directly from sources located outside the State of Missouri, and annually sells and ships goods and services valued in excess of \$50,000 directly to sources located outside the State of Missouri.

The parties present at the hearing stipulated, and we find, that the Employers are engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Glaziers Local 558 and Ironworkers Local 10 are labor organizations within the meaning of Section 2(5) of the Act.

¹Although the attorney for Glaziers Local 558 was served with a notice of the hearing, no representative of that Union appeared at the hearing.

II. THE DISPUTE

A. *Background and Facts of the Dispute*

DiCarlo is the general contractor at the Argosy Casino project located in Riverside, Missouri. Royal was awarded a subcontract for the installation of the skylight at the Argosy Casino jobsite. Royal has a collective-bargaining agreement with the Ironworkers but not with the Glaziers.

Royal initially assigned the work of installing the large skylight at the Argosy Casino project to employees represented by the Ironworkers. Royal commenced work on the project on about October 1, 1995,² and worked for a total of about 13 days. The first 7 days were spent assembling the metal frame. After that task was completed, Royal discovered that the glass panels, worth more than \$50,000, had been vandalized while stored at the jobsite.³ New glass panels were ordered, delaying the work for about 3 weeks.

DiCarlo, through rumor, learned that the Glaziers were claiming the installation of the glass panels into the skylight and were threatening to picket the project. James Duke, DiCarlo's project manager, contacted Gene Burrell, Glaziers Business Agent, in an attempt to reach a compromise to avoid a strike. Following several discussions between Burrell and Duke, Burrell rejected Duke's compromise offer to employ a composite crew to complete the installation of the skylight. The Glaziers maintained its position that the Ironworkers could not touch the glass. Although the issue of wages was discussed, the Glaziers' representative never contacted Royal to inquire about its compensation package.⁴

When the new glass panels arrived at the jobsite, members of the Glaziers began picketing. On October 31, and November 1, the pickets carried signs accusing Royal of violating area wage standards, and passed out handbills. One handbill entitled "Safe Glass is Only a 'Stones [sic] Throw Away' Glaziers Local 558," went on to state, "Don't Cheat Yourself—Use Professional Glaziers." Also shown on the handbill is a picture of a rat wearing an Ironworkers Local Union No. 10 T-shirt and a hat. A similar handbill omitted the picture of the Ironworkers hat, but contained the same message. When an agent of the Ironworkers asked one of the pickets what the problem was, he responded that "the Ironworkers were installing glass" and the installation of glass is Glaziers' work. Glaziers who were employed on other jobs on the project, as well as elec-

²All dates are in 1995, unless indicated otherwise.

³Royal asserted that the glass had been intentionally damaged. Royal presented evidence that the exposed edges of the glass had been damaged and, in some instances, it had been necessary to drill through the wooden packing crates to damage the glass.

⁴On October 26, Duke sent a letter to Burrell disclosing that Royal paid a total wage package in excess of \$25.25 per hour to its employees.

tricians, sheet metal workers, and painters, all honored the picket line and left the jobsite. The picketing ceased on November 1, when DiCarlo's project manager notified the Glaziers that Royal would be off the project until November 4, due to the weather. The Ironworkers eventually completed the installation of the skylight by working on Saturdays.

B. *Work in Dispute*

The work in dispute involves the installation of skylights at the Argosy Casino project in Riverside, Missouri. The work consists of assembling an extruded aluminum frame and bolting it together; installing glass panels (which weigh about 250 pounds each); installing and securing the assembled skylight onto the building; and sealing it with caulking.

C. *The Contentions of the Parties*

The Employer contends that the work in dispute has always been assigned to employees represented by the Ironworkers, with whom it has a current collective-bargaining agreement. Royal asserts, and it is not disputed, that it has no collective-bargaining agreement with the Glaziers.

The initial part of the installation of the skylight consists of assembling the aluminum frame, work that the Glaziers Union does not claim. Royal argues that it is more efficient to have the Ironworkers do the entire job as that avoids bringing in a different craft to perform a very minor segment of the work. The installation of the glass panels into the aluminum frame requires no specialized skill since no glass cutting is involved.

Ironworkers Local 10 agrees with the Employer's position. As noted above, no representative of Glaziers Local 558 attended the hearing so its position, at least for the record, is unknown.

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 no agreed-on method for the voluntary adjustment of the dispute.

During the conversations between Duke and Burrell, prior to the commencement of the strike, Duke, responding to rumors, asked Burrell if there would be picketing over the Ironworkers installing the skylight glass. Burrell answered affirmatively. As a compromise, Duke proposed to Burrell that Royal could employ a composite crew to complete the work. Burrell rejected the compromise, stating that the Ironworkers could not touch the glass. Subsequently, members of the Glaziers Union picketed the project on October 31 and November 1, causing other crafts to

honor their picket line and leave the jobsite. The picketing ceased on November 1, after Duke notified the Glaziers that Royal would be off the project until November 4.

The parties present at the hearing stipulated, and we find, that there is no voluntary method of resolving the competing claims for the disputed work.

We find reasonable cause to believe that the Glaziers violated Section 8(b)(4)(D), and that there exists no agreed-upon 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.

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 the dispute.

1. Certification and collective-bargaining agreements

There is no evidence that either the Ironworkers Local Union No. 10 or the Glaziers Local Union No. 558 have ever been certified as the exclusive collective-bargaining representative of any of the Employers' employees. Royal, however, has a current collective-bargaining agreement with the Ironworkers covering the work in dispute, but not with the Glaziers. Accordingly, the agreement between Royal and the Ironworkers favors an award of the disputed work to employees represented by the Ironworkers.

2. Employer preference

Royal stated its preference for having the work in dispute awarded to employees represented by the Ironworkers. Accordingly, this factor favors an award of the disputed work to employees represented by the Ironworkers.

3. Employer past practice

Royal stated that it has consistently assigned the disputed work to employees represented by the Ironworkers on similar projects in the past. Accordingly, this factor favors an award of the disputed work to employees represented by the Ironworkers.

4. Area practice

Royal presented evidence that the area practice is to assign the installation of skylights, including the glass panels, to Ironworkers. Accordingly, we find that this factor favors an award of the disputed work to employees represented by the Ironworkers.

5. Relative skill

The record shows that both groups of employees possess the skills necessary to perform the work in dispute. Accordingly, this factor does not favor an award of the disputed work to either group of employees.

6. Economy and efficiency of operations

Royal contends that it is more economical and efficient to assign the disputed work to employees represented by the Ironworkers. The current work assignment avoids bringing in a different craft to perform only a minor portion of the work in dispute. Accordingly, we find that these factors favor an award of the disputed work to the employees represented by the Ironworkers.

CONCLUSION

After considering all the relevant factors, we conclude that the employees represented by the Ironworkers are entitled to perform the work in dispute.

We reach this conclusion relying on the factors of collective-bargaining agreements; employer preference; employer past practice; area practice; and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by the Ironworkers, not to that Union or its members.

Scope of Award

The Employers have requested that the Board issue a broad award covering the work in dispute on behalf

of the Ironworkers in view of the Glaziers' repeated picketing of projects where similar work is performed. Before the Board will make such an award, it must be shown that: (1) the work in dispute has been a continuous source of controversy in the relevant geographic area and is likely to recur; and (2) the offending union has a proclivity to engage in further unlawful conduct in order to obtain the work in dispute. See *Laborers (Paschen Contractors)*, 270 NLRB 327, 330 (1984); *Electrical Workers IBEW Local 104 (Standard Sign)*, 248 NLRB 1144, 1147-1148 (1980). There is no indication in this record that Glaziers Local No. 558 is likely to engage in unlawful conduct in pursuit of work similar to the work in dispute at future projects. Accordingly, the award is limited to the controversy at the jobsite that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Royal Remodeling, represented by Ironworkers Local Union No. 10, AFL-CIO, are entitled to perform the work of installing the glass panels in the skylights at the Argosy Casino project located in Riverdale, Missouri.

2. Glaziers, Architectural Metal and Glass Workers Local No. 558 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force DiCarlo Construction Company and Royal Remodeling to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Glaziers, Architectural Metal and Glass Workers Local No. 558 shall notify the Regional Director for Region 17 in writing whether it will refrain from forcing the Employers, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.