

Teamsters Local No. 222 and Geneva Rock Products, Inc. and Operating Engineers Local Union No. 3 AFL-CIO, No. California, No. Nevada, Utah, and Hawaii. Case 27-CD-230

December 27, 1996

DECISION AND ORDER QUASHING NOTICE
OF HEARING

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND HIGGINS

The charge in this Section 10(k) proceeding was filed on June 4, 1996,¹ by Geneva Rock Products, Inc. alleging that Teamsters Local No. 222 (Teamsters) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Geneva Rock to assign certain work to employees represented by Teamsters rather than to employees represented by International Union of Operating Engineers, Local No. 3, AFL-CIO (Operating Engineers). A hearing was held on July 23, before Hearing Officer Nancy S. Brandt. Thereafter, the Employer, Teamsters, and Operating Engineers filed briefs.

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

Geneva Rock Products, Inc. is a Utah corporation engaged in the production and delivery of asphalt, concrete, and related products in the road construction industry. It annually purchases and receives goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Utah.

The parties stipulated and we find that Geneva Rock Products is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Teamsters and Operating Engineers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

Both Teamsters and Operating Engineers have long-standing collective-bargaining relationships and current collective-bargaining contracts with the Employer. Article VII of the contract between Teamsters and the Employer identifies "distributor[sic] truck" as a covered unit classification. The Employer has three distributor trucks. In the Employer's operations, a dis-

tributor truck spreads heated tack oil on a roadbed before asphalt is laid. It is undisputed that the Employer has for many years assigned employees represented by Operating Engineers to operate the distributor trucks.

The dispute in this matter arose when Steve Kappas, a truckdriver in the Teamsters unit, bid for a distributor truck position during the annual bidding procedure under the Teamsters collective-bargaining agreement. The Employer denied his bid on the ground that the bidding procedure did not encompass the position. Thereafter, Kappas filed a grievance, which the Employer denied.

Employees represented by Operating Engineers continued to operate the distributor trucks. There is no evidence, apart from Kappas' bid and subsequent grievance, of an attempt to reassign this work to employees represented by Teamsters.

B. *The Work in Dispute*

The disputed work involves the operation of the distributor truck during the Employer's asphalt paving procedure.

C. *Contentions of the Parties*

The Employer and Operating Engineers contend that the work in dispute should be assigned to employees represented by Operating Engineers based on the Employer's preference and past practice; efficiency and economy of operations; and the collective-bargaining relationship between the Employer and Operating Engineers. The Teamsters contend that the factors of its contract with the Employer, area practice, relative skills, and economy and efficiency of operations favor an award of the work in dispute to employees whom it represents.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k), it must be satisfied that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. This standard requires a finding that there is reasonable cause to believe that a party has used proscribed means to enforce its claims to the work in dispute. On the record before us, we are unable to make such a finding.

The only action undertaken by Teamsters, the Charged Party, in furtherance of its claim to the work in dispute was to support a grievance filed under its collective-bargaining agreement with the Employer. The Board holds that the mere filing of an arguably meritorious grievance does not constitute "coercion" within the meaning of Section 8(b)(4)(ii)(D). *Longshoremen ILWU Local 7 (Georgia-Pacific)*, 291 NLRB 89 (1988), affd. 892 F.2d 130 (D.C. Cir. 1989). There is no basis in this case for finding that Kappas' grievance was not arguably meritorious. Indeed, the issue

¹ All dates are in 1996, unless otherwise indicated.

was not litigated at the hearing and our holding here in no way presages a ruling on the merits of the grievance or the employer's work assignment. We hold only that the Teamsters' contract with the Employer arguably covers the work in dispute, and there is no outstanding Board award under Section 10(k) adverse to the Teamsters' claim to the work in dispute. Thus, on this record, we cannot hold that the grievance is frivolous. Rather, we must find, in the limited record before

us, that there is no basis for holding that it lacks arguable merit.

Under these circumstances, we find that there is no reasonable cause to believe Section 8(b)(4)(D) has been violated. Therefore, we find that we are without authority to determine the merits of this dispute. Accordingly, we shall quash the notice of hearing.

ORDER

The notice of hearing is quashed.