

International Brotherhood of Electrical Workers, Local Union No. 98 and Kastle Philadelphia Joint Ventures d/b/a Kastle Security Systems and Communication Workers of America, District 13, AFL-CIO. Cases 4-CD-950 and 4-CD-951

October 14, 1997

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

The charges in this Section 10(k) proceeding were filed on January 22, 1997, by Kastle Philadelphia Joint Ventures d/b/a Kastle Security Systems, and by Communication Workers of America, District 13, AFL-CIO. The charges allege that the Respondent, International Brotherhood of Electrical Workers, Local No. 98 (Local 98) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer (Kastle) to assign certain work to employees it represents rather than to employees represented by Communication Workers of America, Local 13552, AFL-CIO (CWA). A hearing was held on March 31 and April 10, 1997, before Hearing Officer Stephen J. Holroyd. The Employer, Local 98, and the CWA have filed posthearing briefs.

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

I. JURISDICTION

The Employer, a Delaware corporation, is engaged in the business of installing security systems. During the past year, it purchased and caused to be delivered to its various jobsites goods valued in excess of \$50,000 which it received from suppliers outside the Commonwealth of Pennsylvania. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties stipulated, and we find, that Local 98 and the CWA are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

Three Parkway is a large office tower in Philadelphia which was bought by Reliance Insurance Company and is being refurbished for use as its headquarters. Reliance selected Nason and Cullen as its general contractor. Nason and Cullen subcontracted the installation of the security system to Kastle. Pursuant to the terms of the collective-bargaining agreement be-

tween Kastle and the CWA, Kastle assigned its employees represented by the CWA to perform the security installation work.

The following events are based on the testimony of Robert Keiffer, general manager for Kastle, and Gerald Mickey, president of CWA Local 13552. On December 31, 1996, two Kastle CWA-represented employees went to the Three Parkway site. Kastle's crew chief, Bradley, was asked several questions by a Local 98 shop steward and was told that Kastle was not authorized to be on the jobsite.

On January 2, 1997,¹ Mickey went to Three Parkway and met with Bradley, another Kastle CWA employee, and Mr. Tipping of CWA District 13. They eventually met with IBEW Business Representative and Local President Harry Foy and IBEW Business Representative Tim Brown. Mickey asked whether there was a problem and Foy and Brown replied that pulling wire was "our [IBEW] work."

On January 8, Keiffer telephoned Foy and asked Foy, "[d]o we have a problem?" Foy responded, "I'm not saying you have a problem, but I'm not saying you don't have a problem." Foy then stated, "[y]ou guys don't pay the prevailing wage." Keiffer insisted that Kastle did. Later that day, Keiffer had another telephone conversation in which Foy offered to have the IBEW do all of the security work for Kastle at Three Parkway and, that way, Kastle would not have a prevailing wage issue. Keiffer declined the offer.

On January 8 and 17 Keiffer sent Foy letters reiterating that Kastle paid the prevailing wage.

Keiffer called the IBEW office on January 20 to confirm that the wages Kastle was paying conformed to the IBEW prevailing wage. Keiffer, however, was told that such information would not be given to him. This prompted Keiffer to send a third letter to Foy on January 20 stating, inter alia, "[t]o the best of our knowledge, the prevailing wage and standards are being met by Kastle at the Three Parkway. If it is shown that this is not so, Kastle will immediately make required adjustments, including retroactive adjustments."

There was no response from Foy or anyone at Local 98 to any of Keiffer's letters.

On January 22, Keiffer received a telephone call at about 7:15 a.m. from a Nason and Cullen representative telling him that the Three Parkway building was empty, that no one was working, and that Keiffer needed to solve the problem. Keiffer told the Kastle employees not to report to Three Parkway that day, and filed charges with the Board against the IBEW.

That same day, a picket walked on the sidewalk directly in front of Three Parkway carrying a sign which read:

¹ All subsequent dates are 1997 unless indicated otherwise.

THIS IS A MESSAGE TO THE GENERAL PUBLIC. IBEW LOCAL 98 DOES NOT HAVE A CONTRACT WITH KASTLE SECURITY SYSTEMS.

Later that same day, Keiffer, as well as all the other subcontractors, received a fax from Nason and Cullen stating that all subcontractors were expected to be working at the Three Parkway site the following day. A separate gate was to be set up for Kastle employees.

Kastle sent a crew to the jobsite on January 23. No other subcontractors' employees reported for work.

In the afternoon of January 23, Keiffer received a fax from Nason and Cullen, advising Kastle that because of the delay at the Three Parkway project which was caused by Kastle, that it was going to exercise its right to cancel its contract with Kastle within 72 hours. In response, Keiffer arranged with the IBEW to have composite crews consisting of one Kastle CWA-represented employee working with one Center City Electric IBEW-represented employee perform the security installation work at Three Parkway. This was done through a contract Kastle entered into with Center City Electric.

After entering into the contract with Center City Electric, Nason and Cullen revoked the termination letter, and Kastle has had no further labor problems with the IBEW.

B. *Work in Dispute*

The work in dispute is the installation of the security system at a building located at Three Parkway in Philadelphia, Pennsylvania.

C. *Contentions of the Parties*

The Employer and the CWA contend that there is reasonable cause to believe that Local 98 violated Section 8(b)(4)(D) of the Act. The Employer contends that the work in dispute should be assigned to the Employer's employees represented by the CWA on the basis of the Employer's collective-bargaining agreement with the Communication Workers of America, Local 13552, AFL-CIO;² company preference and past practice; economy and efficiency of operations; and relative skills. The CWA contends that the work in dispute should be assigned to employees it represents based on those same factors and also based on area and industry practice.

Local 98 contends that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated. Local 98 further contends that, if the Board does find reasonable cause, the work in dispute should be assigned to composite crews of employees from both the CWA and Local 98 on the basis of relative skills, area practice, and employer past practice.

²Local 13552 is an affiliate of District 13.

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.

Gerald Mickey testified that on January 2, he was told by IBEW Business Representative and Local President Harry Foy and IBEW Business Representative Tim Brown that there was a "problem" with Kastle because "[w]e're pulling wire here and this is our work." On January 8, in a conversation with Kastle's general manager, Robert Keiffer, Foy offered to have IBEW-represented employees do the work in dispute, stating that if they did, Kastle would not have an issue about whether it was paying its employees at the prevailing wage rate. Notwithstanding Keiffer's statement that Kastle did pay the prevailing wage, his reiteration of that claim in subsequent letters, and his offer to adjust wages and standards if the IBEW could show it did not, an IBEW picket began, on January 22, to walk on the sidewalk directly in front of the Three Parkway site. No one worked at the site that day. The next day, only Kastle CWA-represented employees reported for work. Later that day, Kastle was informed by Nason and Cullen that its contract was going to be canceled, because Kastle was causing a delay to the Three Parkway project. That same day, Kastle signed a contract with Center City Electric providing for the security installation work to be performed by composite crews consisting of one Kastle CWA-represented employee and one Center City Electric IBEW-represented employee. After entering into this contract, Kastle has had no further labor problems.

Contrary to Local 98's contention, we find that Local 98, through the foregoing conduct—especially in light of Foy's January 8 conversation with Keiffer—explicitly made a claim for the disputed work, and that its January 22 picketing was in furtherance of this claim. On this basis, we further find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. The parties stipulated that there exists no agreed-on method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we conclude 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 in-

volved 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

Communication Workers of America, Local 13552, AFL-CIO is the certified representative of the Employer's employees who perform the security installation work at issue. The Employer and Communication Workers of America, Local 13552, AFL-CIO have an existing collective-bargaining agreement which covers the installation work at issue. Accordingly, this factor favors an award of the work in dispute to Kastle employees represented by the CWA.

2. Employer preference and past practice

Kastle prefers to assign the work in dispute to employees represented by the CWA consistent with its longstanding practice of assigning such work to those employees. Accordingly, we find that this factor favors an award of the disputed work to employees represented by CWA.

3. Area and industry practice

The Employer and the CWA presented evidence that, during the past 14 years in the Philadelphia area, employees represented by the CWA have installed approximately 200 Kastle security systems. The IBEW presented evidence that virtually all of Kastle's competitors employ employees that it represents to install security systems in the Philadelphia area. Accordingly, this factor does not favor an award of the disputed work to either group of employees.

4. Relative skill

Keiffer testified that its CWA-represented employees receive specialized training in all aspects of installation, testing, and maintenance of Kastle-designed security systems. Foy testified that as part of their training, employees represented by the IBEW take a course in the installation of security systems as part of their 4-year apprenticeship program. Accordingly, this factor does not favor an award of the disputed work to either group of employees.

5. Economy and efficiency of operations

Keiffer testified that Kastle employees represented by the CWA are full-time, year-round employees who do nothing but work for Kastle on Kastle-designed systems. Kastle's CWA-represented employees perform all of the installation work as well as the testing, servicing, maintaining, and upgrading of the systems. Thus, Kastle's CWA-represented employees are experienced in all aspects of the Employer's work, which fa-

ilitates their assignment to jobs. There is no evidence that employees represented by Local 98 are similarly experienced. Accordingly, we find that this factor favors an award of the disputed work to employees represented by the CWA.

Conclusion

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

We reach this conclusion relying on the factors of certification and collective-bargaining agreement, employer preference and past practice, and economy and efficiency of operations.

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

Scope of Award

The Employer and CWA seek a broad award applicable to all security system installation work performed by Kastle within the geographic area where the jurisdictions of the CWA and Local 98 coincide. They note that previous 8(b)(4)(D) charges have been filed against Local 98 and contend that Local 98 has demonstrated a proclivity to engage in the type of conduct that gave rise to the present proceedings.

Section 10(k) awards are normally limited in scope to the jobsite or sites where the allegedly unlawful conduct occurred. For the Board to issue a broad areawide award: (1) there must be evidence that the work in dispute has been a continuous source of controversy in the relevant geographical area and that similar disputes may recur; and (2) there must be evidence demonstrating the offending union's proclivity to engage in further unlawful conduct in order to obtain work similar to that in dispute. See *Laborers (Paschen Contractors)*, 270 NLRB 327, 330 (1984). Thus, where there is an indication that a dispute is likely to recur, the Board will issue an award broad enough to encompass the geographical area in which an employer does business and in which the jurisdictions of the competing unions coincide. *Plumbers Local 155 (Allied/Hussman)*, 222 NLRB 796 (1976). In the instant case, there is no evidence that Local 98 has a proclivity to engage in such conduct against Kastle. In fact, Keiffer testified that Kastle has never previously had a labor problem with Local 98 on any security installation job it has performed in the Philadelphia area since 1983. Moreover, there was no testimony indicating that Local 98 intended to engage in such conduct against Kastle in the future. Nor do the parties cite any prior 10(k) determination involving the work in dispute here between Local 98 and Local 13552. 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 Kastle Philadelphia Joint Ventures d/b/a Kastle Security Systems represented by Communication Workers of America, Local 13552, AFL-CIO are entitled to perform the work of installing a security system at Three Parkway in Philadelphia, Pennsylvania.

2. International Brotherhood of Electrical Workers, Local Union No. 98 is not entitled by means pro-

scribed by Section 8(b)(4)(D) to force Kastle Philadelphia Joint Ventures d/b/a Kastle Security Systems to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Brotherhood of Electrical Workers, Local Union No. 98 shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing Kastle Philadelphia Joint Ventures d/b/a Kastle Security Systems, by means proscribed by Section 8(b)(4)(D), to assign this disputed work in a manner inconsistent with this determination.