

**Laborers' International Union of North America,
Local Union 703 and Midwest Laboratory In-
stallations, Inc. and Carpenters Local No. 44.**
Case 33-CD-391

July 28, 1997

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

The charge in this Section 10(k) proceeding was filed on December 17, 1996, by Midwest Laboratory Installations, Inc., the Employer, alleging that the Respondent, Laborers' International Union of North America, Local Union 703 (Laborers), 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 it represents rather than to employees represented by Carpenters Local No. 44 (Carpenters). A hearing was held February 14, 1997, before Hearing Officer Greg Ramsay. No briefs were filed.

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.

I. JURISDICTION

The Employer, an Indiana corporation, with its office located in Monticello, Indiana, is engaged in the business of the installation of science casework and equipment in Indiana and Illinois. During the past calendar year, it has purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Indiana. 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 and that the Laborers and Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer is a subcontractor engaged in the installation of science casework and equipment in Indiana and Illinois. Since 1988, the Employer has had a collective-bargaining agreement with the Carpenters covering its employees. In June 1996, the Employer started installing science cabinets and equipment at the University of Illinois Newmark Lab in Champaign-Urbana, Illinois. The Employer assigned the work to its employees who were represented by the Carpenters. This assignment was in accord with the Employer's

past award of similar work to employees represented by the Carpenters.

On or about December 16-20, 1996, the Laborers picketed the jobsite with signs stating, "Midwest Laboratory Installations has no contract with L.L. # 703 Employees of other companies are asked not to refrain from working." The parties stipulated that the Laborers picketed "because the handling and clean-up work involved with the installation process of cabinets and equipment was not assigned to members of Local Union 703"; and this even though since on or about December 13, 1996, Midwest Laboratory Installations, Inc. assigned the disputed work to members of Carpenters Local No. 44 who are its employees.

B. Work in Dispute

The disputed work consists of the handling and cleanup work involved with the installation process of cabinets and equipment at the University of Illinois Newmark Lab in Champaign-Urbana, Illinois.¹

C. Contentions of the Parties

The Employer contends that the work in dispute should be assigned to employees represented by the Carpenters on the basis of the collective-bargaining agreement, past practice, employer preference, area and industry practice, skills, and economy and efficiency of operation.

The Laborers contend that the disputed work should be assigned to employees it represents on the basis of industry practice.

The Carpenters contend that the work in dispute should be assigned to employees it represents on the basis of the collective-bargaining agreement, past practice, employer's preference, area and industry practice, skills, and economy and efficiency of operation.

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) of the Act has been violated and that the parties have not agreed on a method for a voluntary adjustment of the dispute.

As discussed above, the record indicates that the Laborers picketed the jobsite with an object of forcing the Employer to assign the disputed work to employees represented by the Laborers rather than to employ-

¹The notice of hearing defines the disputed work as "the clean-up work after installation of cabinets." We have modified the definition of the work in dispute to include handling and cleanup work involved with the installation process of cabinets and equipment, in accordance with the parties' stipulation set forth above concerning the object of the Laborers' picketing and in accordance with the way the case was litigated at the hearing. The evidence at the hearing showed that the dispute was not limited to cleanup work after the installation of cabinets.

ees represented by the Carpenters. The parties stipulated that there is no voluntary method of resolving the jurisdictional dispute which would be binding on all the parties.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed 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 this dispute.

1. Collective-bargaining agreements

As previously indicated, the Employer has a collective-bargaining agreement with the Carpenters. It does not have an agreement with the Laborers. The Carpenters' contract specifically covers the installation of cabinets and the handling of all materials involved in the installation. Inasmuch as the cleaning work in dispute includes cleaning work that is an integral part of the installation process, we find that this factor favors assigning the work in dispute to employees represented by the Carpenters.

2. Employer preference and past practice

The Employer has consistently assigned the disputed work to its own employees represented by the Carpenters. The Employer's president testified that he preferred that the work in dispute be assigned to employees represented by the Carpenters. We find that the Employer's preference and past practice favor awarding the work to employees represented by the Carpenters.

3. Area and industry practice

Employees represented by the Carpenters have performed similar handling and cleanup work involved with the installation process of cabinets and instruments in other area locations. The Laborers' field representative testified that employees represented by the Laborers have cleaned up cabinets after they have been installed and have helped unload office furniture, including cabinets. Inasmuch as employees represented

by both unions perform some of the disputed work, we find that this factor favors neither group of employees.

4. Relative skills

The Employer's president testified that the cleaning of the cabinets requires a special skill. He stated that knowledge is needed on how to clean the cabinets, including what chemicals to use on what type of cabinet or counter top. If the cleaning is not done correctly, it could cause damage to the epoxy, caulking, and painting involved in the installation of the cabinets. The Laborers maintain that no special skills are needed to perform the disputed cleaning work. However, there is no evidence that employees represented by the Laborers have performed any cleaning work during the installation process. Accordingly, we find that this factor favors the assignment of the work in dispute to employees represented by the Carpenters.

5. Economy and efficiency of operations

The Employer does not employ Laborers. Further, the disputed work is only a very small portion of the amount of work being performed on the jobsite and it is done on an irregular basis for short periods of time. Consequently, the Employer would incur superfluous costs by hiring laborers to perform the work in dispute while retaining its carpenters to perform other traditional work assignments. Accordingly, we find that this factor favors the assignment of work to employees represented by the Carpenters.

Conclusions

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

1. The employees of Midwest Laboratory Installations, Inc. represented by Carpenters Local No. 44 are entitled to perform the handling and cleanup work involved with the installation process of cabinets and equipment at the University of Illinois Newmark Lab in Champaign-Urbana, Illinois.

2. Laborers' International Union of North America, Local Union 703 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Midwest

Laboratory Installations, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Laborers' International Union of North America, Local Union 703 shall notify the Regional Director for Region 33 in

writing whether it will refrain from forcing the Employer by means proscribed by Section 8(b)(4)(D) to assign the disputed work in a manner inconsistent with this determination.