

Local 295, International Brotherhood of Teamsters, AFL-CIO and Emery Air Freight Corp. d/b/a Emery Worldwide and Local 478, International Brotherhood of Teamsters, AFL-CIO. Case 29-CD-509

October 31, 2000

DECISION AND ORDER QUASHING
NOTICE OF HEARING

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The charge in this proceeding was filed on December 2, 1998, by the Employer, Emery Air Freight Corp. d/b/a Emery Worldwide, alleging that the Respondent, Local 295, International Brotherhood of Teamsters, AFL-CIO, violated Section 8(b)(4)(ii)(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 Local 478, International Brotherhood of Teamsters, AFL-CIO. The hearing was held on March 29, April 7 and 15, and June 23, 1999.

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

The Employer, a Delaware corporation, with headquarters located in Redwood Shores, California, is engaged in the business of freight forwarding and the transportation of freight by air and truck. It maintains a facility in Springfield Gardens, New York, and employs truckdrivers and dockworkers in Brooklyn, Queens, Long Island, and Bronx, New York, as well as in Northern and Southern New Jersey. It annually ships goods valued in excess of \$50,000 from its facilities in New York City to customers outside the State of New York. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 295 and Local 478 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer has a collective-bargaining agreement with Local 295 covering approximately 70 drivers and dockworkers employed at the JFK Airport Gateway and the JFK Service Center. The Gateway and Service Center are located about a half mile from the John F. Kennedy Airport. Local 295's jurisdiction with the Employer consists of Brooklyn, Long Island, Queens, the Bronx, part of Westchester County, and Roosevelt Is-

land. The Employer has two collective-bargaining agreements with Local 478, one covering drivers and dockworkers at Emery's Newark Service Center (located less than half a mile from the Newark Airport) and the other covering drivers and dockworkers at its Trenton Service Center. The Trenton facility is approximately 15 miles from the Cranbury, New Jersey facility of Sony Corporation, one of Emery's biggest customers. Local 478's jurisdiction includes New Jersey, as well as Manhattan and Staten Island.

In the summer of 1997, Emery and Local 478 engaged in arbitration over Local 478's claims that Emery employees it represents should be hauling certain import freight from JFK Airport to New Jersey destinations.¹ Prior to the issuance of the arbitrator's decision, Emery and Local 478 reached a partial settlement of the matter. They agreed that instead of having incoming Sony freight hauled directly from the JFK import site to its Cranbury, New Jersey destination, Emery would first transport it to the Newark Service Center, whereupon Local 478 drivers would deliver it to Cranbury. In his September 19, 1997 decision, the arbitrator upheld Local 478's position and determined that under its collective-bargaining agreement with Emery, freight being transported from Emery's JFK Gateway to the Newark Service Center² and from JFK Gateway to Sanyo's Allendale and Norwood, New Jersey facilities must be hauled by Local 478 drivers.³

After the arbitration award, Local 295-represented drivers took Sony freight arriving at JFK to the Newark Service Center, from which point it would be transported to Cranbury by Newark-based Local 478 drivers. This system remained in effect until spring 1998, when Local 478 drivers from Emery's Trenton Service Center began taking the Sony freight from the Newark Center drop point to Cranbury.

Almost immediately after Emery began assigning import freight deliveries from JFK to New Jersey to Local 478 drivers, representatives of Local 295 complained and filed grievances over New Jersey drivers coming to JFK to retrieve shipments originating at JFK. Local 295 attempted to take the matter to an arbitration hearing, whereupon Emery filed an action in district court attempting to have a tripartite arbitration of Local 295's

¹ That dispute arose over Emery's using outside contractors to haul certain freight which Local 478 asserted should be assigned to it.

² This includes about five loads of miscellaneous import freight per week from JFK to Newark.

³ In compliance with the arbitrator's award, Emery began having Local 478 drivers travel from Newark to JFK to pick up import gateway freight and haul it to Sanyo's Allendale and Norwood, New Jersey facilities. This procedure ended in early 1999 when essentially all of Sanyo's incoming freight began being shipped from Japan directly to Newark, thereby eliminating the retrieval trip to JFK.

grievances. Local 478 opposed the action and in October 1998, the district judge denied Emery's request. Thereafter, Local 295's counsel advised Emery's counsel that his client intended not only to pursue the grievances, but also to engage in self-help if necessary. On November 30, 1998, Local 295 shop steward, Rick Craine, told Emery's manager of human resources, Keith Templeton, that his union was out of patience with Local 478 doing Local 295's work and if the situation continued, Local 295 would shut the place down and that no freight would be moved as of December 4, 1998. Emery thereafter contacted its attorneys and filed the unfair labor practice charges in this proceeding.

B. Work in Dispute

The work in dispute is the pick up of all freight at John F. Kennedy Airport and subsequent delivery to consignee Sony Corporation at its facility in New Jersey and all import freight coming through the Employer's John F. Kennedy Airport gateway and destined for the Employer's Newark, New Jersey Service Center.

C. Contentions of the Parties

Local 295 and the Employer agree that on November 30, 1998, Local 295, through Shop Steward Craine, asserted a claim to the disputed work and threatened to take economic action against the Employer if the work was not assigned to Local 295-represented drivers.

The Employer contends that it had previously assigned the work to drivers represented by Local 295; that the only reason it reassigned the work to Local 478-represented drivers was to attempt to partially settle a grievance and to comply with the award of an arbitrator; that the work was done more efficiently by drivers represented by Local 295; and that it could regain that level of efficiency by reassigning the work to Local 295-represented drivers.

Local 295 supported the Employer's position and asserted that its collective-bargaining agreement supports a finding that its unit employees should perform the work in dispute.

At the hearing, Local 478 contended that Local 295 did not assert a valid threat of economic action, that there existed a dispute resolution mechanism to which both unions and Emery, through its collective-bargaining agreements with the unions, were bound, and that the matter was addressed and resolved in the 1997 arbitral process.

Following the close of the hearing, by letter dated September 14, 1999, Local 295 advised the Employer's counsel that "pursuant to a decision rendered by the I.B.T. General Executive Board" it "hereby disclaims all work in dispute" in the instant proceeding. By letter of the same date, Local 295 notified the Board of its dis-

claimer and requested that the Board terminate all proceedings relevant to this work.

The Employer responded that Local 295's disclaimer was ineffective because employees it represents continue to perform some of the work covered within the description of the dispute, Local 295 has not withdrawn grievances over the issue, and Local 295's threat of economic action is inconsistent with the disclaimer.

Local 478 filed a position statement, supporting the effectiveness of Local 295's disclaimer and noting that Local 295 has not engaged in any conduct inconsistent with the disclaimer. Local 478 points out that the work in dispute currently is being carried out and has for a period of years been carried out in accordance with the terms of the Employer's voluntary settlement and an arbitrator's award, that is, with Local 295 drivers hauling freight arriving at JFK and destined for Sony's Cranbury facility to the Employer's Newark Service Center. Local 478 has not claimed the JFK to Newark Service Center portion of the broader "JFK to Sony, Cranbury" delivery route since the 1997 prearbitration settlement with the Employer. Consequently the JFK to Newark leg of the trip has never been part of the work in dispute. Thus, the fact that Local 295 continues to perform that portion of the delivery is not evidence of a continued claim for the disputed work, but rather demonstrates only that the work is being carried out in accord with the Employer's own assignment. There is no evidence that Local 295 has made any new threat or claim to the previously-disputed work, nor could its 1998 threat properly be construed as encompassing the work that it was already doing at that time. Finally, Local 478 attached to its position statement a copy of a letter from Local 295 to the Employer's attorney, dated October 8, 1999, advising Emery that it was withdrawing its demand for arbitration in the cases dealing with the work that was in dispute in the instant case.

Emery challenged Local 478's characterization of the situation, emphasizing that "JFK to Newark Service Center" remains a part of the larger "JFK to Sony, Cranbury" work that was encompassed in the instant dispute and arguing that because Local 295 continues to perform that part of the haul, there continues to be work in dispute.

In order to eliminate any confusion over whether there remain conflicting claims over the same work, Local 478 replied that it "unequivocally disclaims any interest in the hauling of import-cleared freight, destined for Sony in Cranbury, New Jersey, between JFK Airport and the Newark Service Center."

D. Applicability of the Statute

Section 10(k) of the Act, which directs the Board to hear and determine disputes out of which Section 8(b)(4)(D) charges have arisen, limits the Board's au-

thority in this respect to situations in which an employer's assignment of work is in dispute. The Board has held, with Supreme Court approval, that a jurisdictional dispute no longer exists when one of the competing groups of employees effectively renounces its claim to the work. Plumbers Local 262 (Dyad Construction), 252 NLRB 48 (1980), and cases cited therein.

In this case, following the close of hearing, Local 295 disclaimed any interest in the disputed work. The disclaimer was made by letter dated September 14, 1999, to the Employer's counsel. By letter of the same date, Local 295 advised the Board of its disclaimer, requested the termination of further proceedings, and provided the Board with a copy of its notice of disclaimer to the Employer.

The record is clear that the transportation of freight from JFK to Sony's Cranbury, New Jersey facility, as well as deliveries from JFK to the Employer's New Jersey Service Center are ongoing and proceeding without interruption, in accordance with the Employer's 1997 assignment. Employees represented by Local 478 continue to perform that portion of the previously disputed work they were assigned (hauling freight from the Newark Service Center to Cranbury) and employees represented by Local 295 continue to perform the portion they were assigned (transporting freight from JFK to the Newark Service Center).

Although Local 295 claimed, from the time of its threat in late 1998 through the time of the hearing in this case, that it was entitled to the entire JFK to Cranbury route, there had, in fact, been no dispute over the JFK to Newark leg of that route since 1997. The only work in dispute in this case was the Newark to Cranbury segment of the JFK to Cranbury route. Local 295 has, however, now backed away from that position, submitting a written disclaimer and withdrawing its demand for arbitration. Local 478 has further clarified the matter by expressly disclaiming the JFK to Newark segment. The Employer disputes the validity of Local 295's disclaimer, and cites Local 295's continued performance of the JFK to Newark portion of the route as evidence of a current dispute. While we agree that performance of disputed work ostensibly disclaimed would be inconsistent with a valid disclaimer, Local 478's written statement, un-

equivocally disclaiming any interest in the work being carried out by Local 295 makes clear that there are no longer competing claims for the same work. That is, the work described as the JFK to Cranbury route is no longer at issue. Instead, the previous rivals for that work have resolved the dispute by acquiescing in the Employer-designed bifurcation which has been in effect since 1997. Thus, Local 295 continues to haul from JFK to Newark and Local 478 hauls from Newark to Cranbury, with neither labor organization claiming the other's assignment. By their posthearing conduct and mutual concessions, Local 295 and Local 478 have each made a material disclaimer, thereby eliminating the existence of disputed work.

The applicable analysis was well stated in *Longshoremen ILWU Local 62-B v. NLRB*,⁴ as follows:

W]here one of two potentially competing unions explicitly disclaims a demand for the work at issue no jurisdictional dispute exists. See *International Union of Operating Engineers, AFL-CIO Bradshaw Industrial Coatings Inc.*, 64 NLRB 962, 964. [E]ven where such competing claims originally existed, no jurisdictional dispute remains once one of the competing unions renounces its claim to the work. See *Local 372, Service Employees International Union Pepper Construction Co.*, 262 NLRB 815. Moreover, once the competing claims between the employee groups have been resolved, no jurisdictional dispute exists, even if the employer protests the particular resolution. See *Teamsters, Warehousemen, Garage Employees & Helpers Union Local 839 (Shurtleff & Andrews Constructors)*, 249 NLRB 176, 177 (1980).

Applying these principles we find that Local 295's and Local 478's mutual disclaimers are effective and that there no longer exists a jurisdictional dispute within the meaning of the Act.

ORDER

The National Labor Relations Board orders that the notice of hearing issued in this case is quashed.

⁴ 781 F.2d 919, 923 (D.C. Cir. 1986).