

United Brotherhood of Carpenters and Joiners of America, Local 275, AFL-CIO and Lymo Construction Co., Inc. Case 1-CD-1011

July 3, 2001

DECISION AND ORDER QUASHING
NOTICE OF HEARING

BY CHAIRMAN HURTGEN AND MEMBERS
LIEBMAN
AND TRUESDALE

The charge in this Section 10(k) proceeding was filed on January 20, 2000, and an amended charge was filed on February 16, 2000, by Lymo Construction Co., Inc. (the Employer or Lymo). The charge, as amended, alleges that United Brotherhood of Carpenters and Joiners of America, Local 275, AFL-CIO (the Carpenters) 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 the Carpenters represent rather than to employees represented by Sheet Metal Workers, Local 17 (Local 17). The hearing was held on May 3, 2000, before Hearing Officer Laura A. Sacks. Thereafter, the Employer and Local 17 filed briefs in support of their positions. Local 17 additionally filed a motion to quash the Section 10(k) notice of hearing.

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

Lymo is a New Hampshire corporation with a principal place of business located in Manchester, New Hampshire. It is engaged in the business of installing metal roofing, decking, and siding. Annually, in the course and conduct of its business operations, Lymo purchases and receives goods, materials, and supplies valued in excess of \$50,000 directly from suppliers located outside the State of New Hampshire. We find that Lymo is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

At the hearing the parties stipulated, and we find, that the Carpenters and Local 17 are labor organizations within the meaning of Section 2(5) of the Act.

II. DISPUTE

A. *Background and Facts*

In early 1999,¹ Lymo was awarded the metal roofing and siding work on the Astra project in Waltham, Massachusetts, by Turner Construction. Lymo began performing roofing work on that project in late spring or early

summer 1999, using its core group of employees. These employees were represented by Local 17. Lymo and Local 17 are signatory to a collective-bargaining agreement effective through June 30, 2001.

Around July, representatives from Turner Construction notified Daniel Lynch (Lynch), owner and president of Lymo, that Turner Construction had a collective-bargaining agreement with the Carpenters and that the Carpenters were claiming the metal siding portion of Lymo's work on the Astra project. Turner Construction insisted that Lymo use employees represented by the Carpenters to perform this work. Lynch notified Local 17 of Turner's concerns and urged Local 17 to make a deal with the Carpenters over the work in dispute. Thereafter, both unions continued to claim the metal siding work. Lynch testified that, as a result of his ongoing discussions with the Carpenters, and Turner's demand that employees represented by the Carpenters perform the metal siding work, Lymo executed a collective-bargaining agreement with the Carpenters on August 3.

About mid-August, Lymo began metal siding work on the Astra project using a composite crew of Local 17 and Carpenters-represented employees. Lynch testified that, as a result of Local 17's inability to supply sufficient manpower, the composite crew was composed more heavily of employees represented by the Carpenters. Lynch further testified that although Lymo continued to use a composite crew until the job was completed (around March or April 2000, following Lymo's execution of a collective-bargaining agreement with the Carpenters), the Employer's core employees gradually transitioned their membership from Local 17 to the Carpenters. Lynch testified that, as of the May 3, 2000 hearing date, all of Lymo's core employees had become members of the Carpenters and ceased being members of Local 17.

By letter dated August 30, Local 17 filed a grievance over, inter alia, Lymo's assignment of metal siding work to employees represented by the Carpenters. Local 17 sought in its grievance an amount of money equal to lost wages and benefits due to the assignment of metal siding work to Carpenters-represented employees.

Lynch testified that when the siding work commenced (in mid-August) Carpenters Representative Wallace told Lynch that if a full crew of Local 17 employees was used to install the metal siding on the Astra project the Carpenters would strike. Lynch further testified that, on about January 24, 2000, Wallace told Lynch not to pull the Carpenters-represented employees from the Astra project and replace them with Local 17 employees. Wallace said that if Lynch did so, the Carpenters would strike the project.

¹ All dates are in 1999, unless otherwise noted.

B. *The Work in Dispute*

The work in dispute involves the installation of exterior metal siding at the Employer's Astra project in Waltham, Massachusetts, and at future sites in Massachusetts.

C. *The Contentions of the Parties*

Local 17 contends that the notice of hearing should be quashed. It argues that the present controversy is not a jurisdictional dispute within the meaning of Section 10(k) of the Act because the dispute does not involve competing claims for work. Local 17 argues that in order for there to be a jurisdictional dispute there must be a dispute between two groups of employees over which group should perform the challenged work. Here, Local 17 contends that there is only one core group of Lymo employees who perform the disputed work and that the Carpenters have replaced Local 17 in representing those core employees. Local 17 further argues that it has disclaimed all interest in the work. Next, Local 17 contends that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated because the Carpenters' strike threat was not genuine. Finally, Local 17 contends that if the Board should find that a bona fide jurisdictional dispute exists the work should be awarded to those employees who are represented by Local 17 based on, e.g., collective-bargaining agreements, area and industry practice, and relative skills.

Lymo contends that a jurisdictional dispute exists and that there is no agreed-upon method to resolve the dispute. Lymo asserts that in late spring and early summer of 1999, assignment of its metal siding work on the Astra job was being disputed by competing demands of both the Carpenters and Local 17. Following its assignment of that metal siding work to a composite crew of employees, some of whom were represented by the Carpenters and others by Local 17, the latter filed a grievance against Lymo. In this grievance, Local 17 contends that Lymo violated the contract's no-subcontracting clause. As argued by Local 17, its complaint with Lymo is that Lymo sought to replace Local 17 as its employees' bargaining representative by negotiating a contract with the Carpenters and, thereafter, by creating a working environment that encouraged Lymo employees to join the Carpenters and drop out of Local 17. As stated by Local 17 on brief, its dispute with Lymo is over which union should represent Lymo employees, not that different employees should perform the work.

Lymo argues that Local 17's grievance-filing and the Carpenters' threat to strike if Lymo changed the assignment constitute 8(b)(4)(D) violations and require the Board to enter a Section 10(k) award. On the merits of

the work assignment, Lymo asserts that the factors of certification and collective-bargaining agreements, employer preference and past practice, relative skills and safety, industry practice, and economy and efficiency favor an award of the disputed work to employees represented by the Carpenters.

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: (1) there are competing claims for the work; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (3) the parties have not agreed on a method for the voluntary adjustment of the dispute.²

On the record before us, we are not satisfied that there are competing claims for the work.³ Although the Employer has framed the issues in terms of a work assignment dispute, it is clear that the dispute is not over the assignment of metal siding work to one group of employees instead of a different group, within the meaning of Section 8(b)(4)(D). Rather, as argued by Local 17, the dispute is over which union will represent the single group of employees currently performing that work. None of the parties have objected to the performance of the metal siding work by the Employer's current employees. On the contrary, the Employer would like to retain its current employees, but prefers that the Carpenters represent them. Lymo, Local 17 and the Carpenters are in dispute only over which union should represent the employees currently performing the metal siding work at the Astra project. For this reason, we find that this dispute "is representational in nature, and is not the type of dispute Section 10(k) was designed to address." *Glass & Pottery Workers Local 421 (A-CMI Michigan Casting Center)*, 324 NLRB 670, 674 (1997).

It is well established that a dispute within the meaning of Section 8(b)(4)(D) requires a choice between two competing groups. In this regard, the Board has stated:

There must, in short, be either an attempt to take a work assignment away from another group, or to obtain the assignment rather than have it given to the other group.⁴

² *Teamsters Local 259 (Globe Newspaper Co.)*, 327 NLRB 619, 622 (1999); *Laborers Local 113 (Super Excavators)*, 327 NLRB 113, 114 (1998); *Laborers' District Council of West Virginia*, 325 NLRB 1058, 1059 (1998).

³ *Laborers Local 1 (DEL Construction)*, 285 NLRB 593 (1987).

⁴ *Commercial Workers Local 1222 (FedMart Stores)*, 262 NLRB 817, 819 (1982), quoting *Communications Workers (Mountain States Telephone)*, 118 NLRB 1104, 1107-1108 (1957).

Sections 8(b)(4)(D) and 10(k) were not intended to cover situations such as this one where the dispute is concern whichs of two local union will represent the Employer's current employees.⁵ Thus, we conclude that this matter is

⁵ *Carpenters Local 1307 (J&P Building Maintenance)*, 331 NLRB 245 (2000); *Teamsters Local 222 (Jelco, Inc.)*, 206 NLRB 809 (1973).

not a jurisdictional dispute within the meaning of Section 10(k). Accordingly, we shall quash the notice of hearing.

ORDER

IT IS ORDERED that the notice of hearing issued in this case is quashed.