

**International Brotherhood of Electrical Workers,
Local 98 a/w International Brotherhood of Elec-
trical Workers, AFL-CIO and The Farfield
Company, Inc.** Case 4-CD-1070

July 18, 2002

DECISION AND ORDER QUASHING NOTICE
OF HEARING

BY CHAIRMAN HURTGEN AND MEMBERS COWEN
AND BARTLETT

The charge in this Section 10(k) proceeding was filed on September 20, 2001, by The Farfield Company, Inc. (Farfield), alleging that the Respondent, International Brotherhood of Electrical Workers, Local 98 a/w International Brotherhood of Electrical Workers, AFL-CIO (IBEW), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Farfield and/or Bruce Industrial Company (Bruce), to assign certain work to employees represented by International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Riggers Local 161 (Iron Workers), rather than to unrepresented employees of Bruce. The hearing was held on November 14, 2001, before Hearing Officer Henry R. Protas. Thereafter, Farfield and IBEW filed briefs in support of their positions.

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 parties stipulated that Farfield, a Delaware corporation with its headquarters located in Lititz, Pennsylvania, is engaged in business as an electrical contractor. During the 12-month period preceding the hearing, Farfield sold services valued in excess of \$50,000 directly to customers located outside the Commonwealth of Pennsylvania. On the basis of the parties' stipulation, we find that Farfield is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties also stipulated, and we find, that IBEW is a labor organization within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts*

Farfield has a contract with Southeastern Pennsylvania Transportation Authority (SEPTA), to remove and replace switchgear equipment at three substations providing electrical power for the operation of SEPTA trains.

The three substations, Mt. Vernon, Callowhill, and Ellen, are located in Philadelphia. Farfield's employees are not represented by a labor organization.

Farfield began work at the Mt. Vernon substation in the summer of 2001. It assigned two of its employees to the job: Superintendent Scott Goehringer and employee Wes Reed. Goehringer and Reed were assigned the electricians' work of connecting the new equipment after it had been moved inside the substation. Farfield subcontracted to Hake, Inc., whose employees are represented by Iron Workers, the work of removing the old switchgear equipment and unloading, transporting, and placing the new switchgear equipment in designated locations within the substation. This is normally the type of work performed by riggers, such as those represented by Iron Workers.

Hake's employees removed the old switchgear equipment from the Mt. Vernon substation in early August of 2001 without incident. On August 29, 2001,¹ Hake employees were scheduled to unload about 30 pieces of new equipment and move them into the substation. Ray DellaVella and Bill Edwards, agents of IBEW, began picketing at the site. They carried signs alleging that Farfield was destroying area standards.² No one from IBEW blocked ingress or egress to the worksite. No one from IBEW claimed that any work should be assigned to employees it represents. After the picketing began, Hake's employees stopped working and left the site. They had moved and placed in the substation only three of the 30 pieces of new equipment.

Farfield terminated its subcontract with Hake and entered into a new subcontracting agreement for the same work with Bruce. Bruce's employees are not represented by a labor organization. On September 19, Bruce resumed the work left unfinished by Hake. On that day, DellaVella arrived at the job site with two Philadelphia policemen. The policemen left after verifying that Bruce had the proper permits to shut down the street and sidewalk. DellaVella stayed at the site and was joined by Edwards. Iron Workers Vice President Kevin Kulp and four members of Iron Workers also came to the site. Kulp told Goehringer that he was shutting down the job because Bruce was performing the work with nonunion employees. Neither of the IBEW agents made any claim for work.

The members of Iron Workers then stood in front of the loading dock of the substation and physically prevented the Bruce employees from installing the switch-

¹ All dates are in 2001 unless otherwise indicated.

² DellaVella testified that the Farfield name was handwritten on signs that had printed allegations of destruction of area standards. Goehringer could not recall what the picket signs said.

gear equipment. DellaVella and Edwards walked around the general area. They occasionally joined the Iron Workers members, but did not stand with them at any time when Bruce was attempting to perform its work. DellaVella, Edwards, and the Iron Workers members left the site when Bruce prepared to leave. Kulp remained.

On October 9, Bruce returned to the Mt. Vernon substation. IBEW Business Agent Chuck Hardy approached Goehringer by the loading dock and asked him if anyone else was coming down. Hardy apparently mistook Goehringer for an IBEW member. When Goehringer explained that he worked for Farfield, Hardy made no further comments. He made no claim for any work at the site. Later, DellaVella and Edwards arrived at the site wearing picket signs protesting the alleged destruction of area standards.³ They walked to the front of the loading dock. When Goehringer asked if they were going to block Bruce from moving the equipment, they moved 3 to 5 feet from the opposite ends of the dock without making any comment. Bruce performed its work without interference. It finished the job by 11 a.m. and DellaVella and Edwards left at that time.

B. *The Alleged Work In Dispute*

The notice of hearing describes the work in dispute as the riggers' work of "loading, unloading, handling, transporting, and installing heavy equipment switchgear at the 1301 Mt. Vernon Avenue, Philadelphia, Pennsylvania SEPTA substation."

C. *The Contentions of the Parties*

Farfield contends that IBEW has not offered a valid reason for its conduct at the Mt. Vernon jobsite on August 29, September 19, or October 9. Farfield argues that on these occasions, IBEW was either attempting to induce Farfield and/or Bruce to assign the riggers' work to employees IBEW represents or to employees represented by Iron Workers. In either case, there is reasonable cause to believe that a violation of Section 8(b)(4)(D) occurred. Farfield further argues that IBEW's assertion that it was protesting substandard wages is not valid because there was no public to view IBEW's signs and the signs did not identify Farfield. Finally, Farfield argues that the Board should find that Farfield is entitled to use employees of its choice on the SEPA project jobsites.⁴

The IBEW argues that the Board lacks jurisdiction to hear this matter because there is no evidence that it ever claimed the riggers' work for employees it represents or

for employees represented by Iron Workers, and because there is no evidence that it engaged in any proscribed activity. Accordingly, IBEW contends that the notice of hearing should be quashed.

Iron Workers did not appear at the hearing or file a brief in this proceeding. The hearing officer stated on the record that Iron Workers disclaimed interest in the riggers' work. No party disputes the validity of this disclaimer.

D. *Applicability of the Statute*

In a 10(k) proceeding, the Board must determine whether there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. In the instant case, this requires a finding that there are competing claims to disputed work between rival groups of employees and that at least one of the groups used proscribed means to enforce their claim. *Laborers (Albay Construction)*, 314 NLRB 989, 990 (1994).

For the reasons set forth below, we find that IBEW's conduct, when considered as a whole, had the objects of protesting Farfield's alleged destruction of area standards and of seeking to represent current Farfield employees who were performing the electrical work of connecting the new equipment inside the Mt. Vernon substation. This conduct does not constitute a claim for the performance of *outside* riggers' work most recently performed by Bruce's employees or for the performance of inside electricians' work performed by Farfield's employees. Finding that there are no competing claims to disputed work, we conclude that no jurisdictional dispute exists.

On both August 29, and October 9, IBEW picketed the jobsite with signs protesting Farfield's allegedly substandard wages. DellaVella testified that this protest was based on wage information obtained by IBEW representative Edwards in an interview with Farfield employee Reed.

The Board has held that peaceful area standards picketing does not constitute a competing claim for work. Thus, in *Electrical Workers Local 25 (Unity Electric Co.)*, 211 NLRB 256, 257 (1974), the Board held:

Respondent has carried on picketing for the purpose of advising the public that wages paid by Unity are lower than those received under its contracts. To reach that end placards advertised that as its purpose and the pickets were instructed to neither block trucks nor talk to any employees at the site. Such conduct does not indicate a dispute over work assignment but merely an attempt to advertise the substandard wage scale paid by Unity. [Citations omitted.]

³ DellaVella testified that as with the August 29 signs, the Farfield name was handwritten on printed signs alleging the destruction of area standards. Goehringer could not recall what was on the signs.

⁴ We note that Farfield does not argue that IBEW wanted the inside electrical work reassigned to employees it represents.

IBEW's picketing on August 29, and October 9, is virtually identical to that of the union in *Unity*. IBEW's signs advertised that its purpose was the protest of allegedly substandard wages and the pickets did not engage in any blocking activity. Under the rationale of *Unity*, we find that IBEW's August 29 and October 9 area standards picketing was not a claim for disputed work.

In addition, it is clear from the record that another object of IBEW's conduct was to organize Farfield's employees who were performing the inside electricians' work. At the hearing in this proceeding, IBEW representative DellaVella testified: "My interest is to organize Farfield into the IBEW." When asked under what conditions he would prefer Farfield to perform the work, he answered, "With their current employees as members of IBEW." In short, IBEW sought to represent the current Farfield employees. This does not constitute a competing claim for work under Board precedent. In referring to the requirement of Section 8(b)(4)(D) that there be two competing groups, 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.

A demand for recognition as bargaining representative for employees doing a particular job, or in a particular department, does not to the slightest degree connote a demand for the assignment of work to particular employees rather than to others. *Laborers Local I (DEL Construction)*, 285 NLRB 593, 595 (1987), quoting *Food & Commercial Workers 1222 (FedMart Stores)*, 262 NLRB 817, 819 (1982).

Farfield contends that IBEW's conduct had a third objective, namely, to obtain the outside riggers' work for employees it represents or for employees represented by Iron Workers. However, the record, fairly considered as a whole, does not support this contention.⁵

⁵ Member Cowen agrees that there is no evidence that IBEW claimed the rigging work for itself. With respect to the contention that IBEW claimed the work for the Iron Workers, Member Cowen finds the fact that IBEW's picketing during September and October was coextensive with the presence of nonunion riggers at the site to be some evidence of this object. However, in light of Farfield's failure to challenge the legitimacy of the Iron Workers' disclaimer, he agrees with his colleagues that the record taken as a whole does not support Farfield's contention that IBEW claimed the work for Iron Workers' represented employees.

There is no evidence that IBEW expressly claimed the riggers work for either group of employees on August 29, September 19, or October 9. Nor is there evidence that IBEW interfered with the performance of the riggers' work on any of those occasions.

While IBEW made no claim for the riggers' work, Iron Workers did make such a claim on September 19. Farfield Superintendent Goehringer testified that Iron Workers Vice President Kulp told him that Iron Workers was shutting down the job because Bruce was performing the work with nonunion riggers. Iron Workers' members then blocked the loading area and physically prevented Bruce employees from moving the new switchgear equipment. IBEW's representatives stood with Iron Workers' members at times on September 19, but never when Bruce employees were attempting to perform the work.

Assuming arguendo that the presence of the IBEW representatives in close proximity to the Iron Workers' members at the Mt. Vernon substation on September 19, is evidence that IBEW was supporting the Iron Workers' claim to the riggers' work, that claim was subsequently abandoned. Thus, it is undisputed that Iron Workers validly disclaimed interest in the riggers' work. There is no evidence that after September 19, Iron Workers took any further action or made any further appearances at the Mt. Vernon jobsite or elsewhere in connection with the riggers' work. Further, there is no evidence (or even a contention) that after September 19, IBEW took any additional action on behalf of Iron Workers' claim for the riggers' work. Indeed, IBEW's post-September 19 conduct, is consistent with its area standards protest, which began on August 29, and which, as discussed above, does not constitute a competing claim for work.

Considering all the circumstances in this case, we find that IBEW has engaged in area standards picketing and has sought to represent Farfield's current employees. Neither objective constitutes a claim for the assignment of work to one group of employees rather than another within the meaning of Section 8(b)(4)(D). Accordingly, as there is no jurisdictional dispute properly before the Board for determination, we shall quash the notice of hearing.

ORDER

It is ordered that the notice of hearing issued in this proceeding is quashed.