

International Brotherhood of Electrical Workers, Local 98 and Total Cabling Specialists, Inc. and Communications Workers of America, Local 13000. Case 4–CD–1071–1

September 12, 2002

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (Act). The charge in this proceeding was filed by Communications Workers of America, Local 13000 (Local 13000), alleging that the Respondent, International Brotherhood of Electrical Workers Local 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 Total Cabling Specialists (Employer), to assign certain work to employees it represents rather than to employees represented by Communications Workers of America, Local 13000 (Local 13000). The hearing was held on November 28, 2001, before Hearing Officer Wendy B. Silver. Local 13000 filed a posthearing brief.

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 Pennsylvania corporation, is engaged in the business of installing telecommunications wire and cabling. It annually purchases and receives goods and services valued in excess of \$50,000 from its facility located at 605 Jeffers Circle, Exton, Pennsylvania, directly from points outside the Commonwealth of Pennsylvania. 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 98 and Local 13000 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

In September 2001, General Dynamics contracted with the Employer to perform the voice and data cable work for three office suites in the Public Ledger Building in Philadelphia, Pennsylvania. Christopher Martinez was the project manager for General Dynamics at the jobsite.

The following discussion of Local 98's interactions with Martinez is based on his uncontradicted testimony. In early September 2001, Ray Della Vella, business representative of Local 98, approached Martinez at the site. A heavily muscled associate, with a bulletproof vest under his shirt, accompanied Della Vella. Della Vella

claimed to be from "Licensing and Inspections" and said he wanted to see the permits and licenses for the Employer at the jobsite. Della Vella then handed Martinez his Local 98 card as identification. Following some further conversation, Martinez refused to provide that information, and instead gave Della Vella his own number and the number of Martinez' supervisor, Jim Chaney. Della Vella told Martinez that "Local 98 runs the city and that by the time he was done, he'll run everything that happens in the city, and that if [Martinez] wanted to play this game, that [Della Vella] knew where [Martinez] lived out in Royersford." Martinez informed Della Vella that he probably had an old address, and Della Vella replied, "We'll see."

Martinez told Della Vella that union labor requirements on the project were met because the Employer used Local 13000-represented employees. Della Vella replied "Who recognizes CWA as a union? Not me. Not the IBEW." Martinez then declined to continue the conversation, and Della Vella told Martinez that if he "continued to play this game, it would get rough."

Martinez testified that, the following morning, at 4:30 a.m., he awoke to the sound of his dog barking at the window on the second floor of his home. Martinez looked out the window and saw two human silhouettes that he thought matched the profiles of Della Vella and his associate. Martinez sent his dog downstairs, where the dog barked at the individuals through the window. When Martinez arrived downstairs, the individuals were gone.

Three weeks later, Della Vella was again at the jobsite talking on a cell phone, when he saw Martinez. Martinez told Della Vella that "it must really hurt that (the Employer) got the permits and that you guys (Local 98) aren't in here doing the work." Della Vella remarked that "what's really gonna hurt is when I bash your f—ing head."

Martinez discussed these incidents with his superiors, and they raised the option of giving Local 98 some of the work at the jobsite. General Dynamics then told Martinez to draw up plans in order to initiate re-bidding on all the projects at the jobsite.

Ultimately, the Employer was forced to pull out of the job because the relevant permits were rescinded. According to Martinez and Evan Mandras, the Employer's operations manager, the electrician who obtained the permits for the Employer rescinded them because "he didn't want to get in the middle of a battle between the two unions." Once the Employer left the job, General Dynamics rebid the work and awarded the contract to LAN Connect, whose employees are represented by Lo-

cal 98. LAN Connect employees completed the work at the jobsite.

B. Work in Dispute

The disputed work involves the installation and renovation of voice and data cable work at the Public Ledger Building in Philadelphia, Pennsylvania.

C. Contentions of the Parties

Local 13000 contends that there is a jurisdictional dispute within the meaning of Section 10(k) of the Act regarding the assignment of the work in question. It argues that the threats of physical violence made against Christopher Martinez provide reasonable cause to believe that Local 98 violated Section 8(b)(4)(D) of the Act. Local 13000 also argues that there is no voluntary method of adjustment in this case, because the Employer has not agreed to be bound by the "Understanding between Communications Workers of America and International Brotherhood of Electrical Workers," which assertedly provides a means of resolving the present dispute. Finally, Local 13000 requests that the Board grant a broad award in this dispute, awarding any voice and data cabling work to employees represented by Local 13000 wherever the geographic jurisdictions of Local 13000 and Local 98 overlap.

Local 98 did not file a brief in this case. At hearing, Local 98 contended that there is no reasonable cause to believe that Section 8(b)(4)(D) was violated and that, in any event, there is an agreed-upon method of resolving the dispute between the two parties. Local 98 also opposes the imposition of a broad work award on the ground that the notice of hearing in this proceeding only specified the particular work at the Public Ledger Building.

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) that the parties have not agreed on a method for the voluntary adjustment of the dispute.¹

We find that the two unions had competing claims for the disputed work in question. It is undisputed that the workers assigned to the job were members of Local 13000. Local 98's Della Vella questioned Martinez about the union labor status of the work the Employer

was performing, and stated that the IBEW did not recognize Local 13000 as a legitimate union. In addition, Della Vella's statement that Local 98 ran the city and would run every job in the city illustrates that Local 98 sought the work Local 13000-represented employees were performing. Local 98's actions induced the general contractor into considering a rebid of the project, and ultimately led to the loss of the permits needed by the Employer to continue the job. These factors indicate that Local 98 also claimed the work at the Public Ledger Building.

In pursuit of Local 98's claim for the work, Della Vella threatened Martinez by informing him that Local 98 knew where he lived, and that by refusing to do what Della Vella wanted things "would get rough." Martinez testified that two individuals came on to his property at 4:30 in the morning, and they appeared to be Della Vella and his associate. Della Vella also threatened to "bash" Martinez' head when Martinez commented about the Employer's continued presence at the jobsite. These threats clearly constitute reasonable cause to believe that Section 8(b)(4)(D) has been violated.

Local 98 presented evidence that Local 13000 and Local 98 are signatories to a voluntary adjustment plan entitled "Understanding between Communications Workers of America and International Brotherhood of Electrical Workers." Neither party contends, however, nor does the record show, that the Employer has agreed to be bound by this agreement. The Board has consistently held that, in order to have meaning under Section 10(k) of the Act, a voluntary method of adjustment must be binding upon all parties. *Glazers Local 27 (E. J. Hayes)*, 325 NLRB 674, 675 (1998). We therefore find that there is no agreed-upon method for the voluntary adjustment of the dispute.

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

¹ *Carpenters Local 275 (Lymo Construction Co.)*, 334 NLRB 422, 423 (2001); *Teamsters Local 259 (Globe Newspaper Co.)*, 327 NLRB 619, 622 (1999); *Laborers Local 113 (Super Excavators)*, 327 NLRB 112, 114, (1998).

The following factors are relevant in making the determination of this dispute:

1. Collective-bargaining agreements

The record indicates that the Employer has a collective-bargaining agreement with Local 13000. No evidence was produced to indicate any agreement between the Employer and Local 98. We therefore find that this factor favors an award of the work in dispute to employees represented by Local 13000.

2. Employer preference and past practice

Evan Mandras, operations manager for the Employer, testified that the Employer prefers to use its own Local 13000-represented employees to perform the disputed work, and that the Employer did assign the disputed work to these employees. We find that this factor favors an award of the disputed work to the Employer's employees represented by Local 13000.

3. Area and industry practice

Executive vice president of Local 13000, Edward Mooney, testified that Local 13000 represents 3500 to 4000 employees in the Philadelphia metropolitan area number, and that it has collective-bargaining agreements with several companies, including Lucent Technologies and Verizon, as well as the Employer. Nonetheless, there is no evidence of area or industry practice that favors assignment of the work in dispute to employees represented by either Union. Local 98 presented no evidence on this point. Accordingly, we find that this factor is inconclusive and does not favor employees represented by either union.

4. Relative skills and training

The only direct evidence of the skills and training of the respective employees indicates that Local 13000-represented employees are qualified to perform the work in dispute. Mooney testified that Local 13000-represented employees undergo several training programs, including employer-based, product-based, and upgrade training. In addition, Mandras testified that the Employer views Local 13000-represented employees as qualified to perform the work in dispute.

Local 98 sought to have Mooney confirm, on cross-examination, that Local 98-represented employees possess qualifications and training commensurate with those possessed by employees represented by Local 13000. As Mooney claimed ignorance of Local 98 training methods and could only "assume" that Local 98 had similar training, we find this evidence insufficient to infer the actual qualifications of Local 98-represented employees.

The record does indicate, however, that Local 98-represented employees completed the disputed work

once the Employer lost the necessary permits. It is logical to infer from this fact that Local 98-represented employees are also capable of performing the disputed work. Accordingly, the evidence fails to show that either group of employees possesses superior qualifications regarding the disputed work, and we find that this factor does not favor employees represented by either Union.

5. Economy and efficiency of operations

Neither party introduced evidence to indicate which group of employees would more efficiently or economically perform the disputed work. Madras did testify that Local 13000-represented employees are able to perform the disputed work in an efficient manner. Local 98 offered no evidence on this point, yet the record indicates that Local 98 employees completed the actual work. Overall, the evidence fails to indicate that the use of either group of employees is more efficient or economical. Therefore, we find that this factor does not favor employees represented by either Union.

Conclusion

After considering all the relevant factors, we conclude that employees represented by Local 13000 are entitled to perform the work in dispute. We reach this conclusion relying on the existing collective-bargaining contract between Local 13000 and the Employer, and the Employer's preference and past practice of assigning the work. In making this determination, we are awarding the work to employees represented by Local 13000, not to that Union or its members.

Scope of the Award

Local 13000 requests a broad work award covering all telecommunications work, or at a minimum all voice and data cabling work, assigned by any employer wherever the geographic jurisdictions of Local 98 and Local 13000 coincide. In order for a broad award to be appropriate, the Board requires (1) that there be evidence that the disputed work has been a continuous source of controversy in the relevant geographic area and that similar disputes may recur, and (2) that the charged party has a proclivity to engage in unlawful conduct in order to obtain work similar to the work in dispute. *Foley Construction Co.*, 316 NLRB 360, 363 (1995) (citations omitted).

Local 13000 cites two cases decided by the Board where Local 98's activities were directed at an employer in Philadelphia that had a collective-bargaining agreement with CWA District 13.² In both of these cases, we awarded a broad work award in favor of employees represented by District 13 because the evidence indicated an

² *Lucent Technologies, Inc.*, 324 NLRB 230 (1997), and *Lucent Technologies, Inc.*, 324 NLRB 226 (1997).

ongoing dispute regarding telecommunications work and Local 98's proclivity to take unlawful action in order to obtain the work in dispute.

We find that these cases, and others³ evidence an ongoing dispute regarding the voice and data cabling work in the Philadelphia region and a likelihood that the dispute may recur in the future. We also find that the evidence indicates Local 98's proclivity to engage in unlawful activity as a means for obtaining disputed work. Accordingly, we find a broad award to be appropriate. Therefore, our determination of this dispute applies to all similar disputes involving the Employer wherever the geographical jurisdictions of Local 13000 and Local 98 coincide.⁴

³ See *Swartley Bros. Engineers, Inc.*, 337 NLRB 1270, 1271 fn. 3 (2002).

⁴ Local 98 stated at the hearing that it would oppose a broad award on due process grounds. We find that Local 98's failure to request a postponement of the hearing and failure to produce a brief in this case waive any procedural defenses to a broad work award.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Total Cabling Specialists, Inc. represented by Communications Workers of America, Local 13000, are entitled to perform voice and data cable work at the Public Ledger Building in Philadelphia, Pennsylvania, and wherever the jurisdictions of Local 13000 and Local 98 coincide.

2. International Brotherhood of Electrical Workers, Local 98 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Total Communications Systems, Inc. to assign the disputed work to employees represented by it.

3. Within 14 days from this date, International Brotherhood of Electrical Workers, Local 98, shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing Total Cabling Specialists, Inc. by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.