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International Association of Machinists and Aerospace Workers, District Lodge 776 *and* Lockheed Martin Aeronautics Company and International Brotherhood of Electrical Workers, Local 20. Case 16–CD–153

April 30, 2008

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act. Lockeed Martin Aeronautics Company (the Employer) filed a charge on October 24, 2007,[1] alleging that the Respondent, International Association of Machinists and Aerospace Workers, District Lodge 776 (IAM), violated Section 8(b)(4)(D) of the Act by threatening to engage in picketing activity with an object of forcing the Employer to assign certain work to employees represented by the IAM rather than to employees represented by International Brotherhood of Electrical Workers, Local 20 (IBEW). The hearing was held on November 6 before Hearing Officer Lisa C. House. Thereafter, the Employer, the IAM, and the IBEW filed posthearing briefs.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error.[2] On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that the Employer is a corporation with an office and place of business in Fort Worth, Texas, where it is engaged in the manufacture of aircraft. During the 12 months preceding the hearing, a representative period, the Employer sold and shipped goods from its Fort Worth, Texas facility valued in excess of $50,000 directly to points located outside the State of Texas. 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 IAM and the IBEW are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer operates a military aircraft manufacturing facility in Fort Worth, Texas. Five unions represent various of its employees at this facility, including the IAM and the IBEW, both of which represent Board-certified units. The Employer's collective-bargaining agreement with the IAM, which became effective in April 2006, covers approximately 3000 production and maintenance employees, including Stationary Engineers, who perform air-conditioning unit maintenance. The Employer's collective-bargaining agreement with the IBEW, effective May 2006, covers approximately 60 electrician maintenance employees, who perform electrical maintenance, refrigeration unit maintenance, and air-conditioning maintenance.

Prior to 1989, the Employer followed a practice of using a "20-ton rule" when assigning air-conditioning work. Under this rule, the Employer assigned the maintenance work for all air-conditioning units 20 tons or greater to the IAM and all units less than 20 tons to the IBEW. In 1989, the Employer, the IBEW, and the IAM entered into an agreement with respect to work assignments for air-conditioning work (1989 Agreement) to resolve an increasing number of jurisdictional disputes between the IAM and the IBEW over air-conditioning unit installation and maintenance work. The 1989 agreement provides in pertinent part:

> 1. Present work assignments will continue as they exist as of the date of this Agreement. If there is a replacement of an existing unit, the classification presently assigned will continue to be assigned, regardless of the size of the replacement unit or units. Attached to this agreement is a listing of units and work assignments as they currently exist. Exceptions to this general rule will be made for the following:
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> - Chilled water units, which will be assigned to Stationary Equipment Mechanics[3]
> - Units for equipment cooling, which will be assigned to Electricians-Maintenance A—R&A

Although the 1989 Agreement does not address the 20-ton rule, the Employer followed this rule prior to 1989 and con-

[1] Unless otherwise indicated, all dates refer to 2007.

[2] Effective midnight December 28, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[3] The classification "Stationary Equipment Mechanics" was subsequently changed to "Stationary Engineers," still represented by the IAM.

tinues to use the 20-ton rule in making air-conditioning maintenance work assignments.

The IBEW filed grievances over the Employer's application of the 20-ton rule in 1995 and 1999. The Employer did not alter its use of this practice in response to these grievances. As a result of the 1995 grievance, the Employer agreed to furnish the IBEW with information regarding the future assignment of air-conditioning unit work and developed a recordkeeping system to track air-conditioning unit work assignments.

The dispute that led to this case arose in 2005, when the Employer installed four air-conditioning units—two 15-ton units and two 20-ton units. The Employer initially assigned the four units to employees represented by the IBEW. The IAM subsequently objected to the assignment with respect to the two 20-ton units. Thereafter, the Employer reexamined its decision and reassigned the two 20-ton units to the IAM-represented employees. The IBEW subsequently filed a grievance, arguing that the units in question should be assigned to the IBEW pursuant to the 1989 Agreement. On August 13, the IAM threatened to picket the Employer if the Employer assigned the disputed work to members of the IBEW. The Employer thereafter filed the instant charge, asserting that the IAM violated Section 8(b)(4)(D) of the Act.

B. Work in Dispute

The parties stipulated that the work in dispute is the maintenance on two, 20-ton air-conditioning units in building 8, bay 2 data center at the Employer's Fort Worth, Texas facility.

C. Contentions of the Parties

The Employer contends that there is reasonable cause to believe that the IAM has violated Section 8(b)(4)(D) because there are competing claims to the work, the IAM threatened to picket if the Employer assigned the work to the IBEW-represented employees, and there is no agreed-upon voluntary method of adjustment of the dispute. On the merits of the dispute, the Employer asserts that employer preference, past practice, economy and efficiency of operations, and job loss favor awarding the disputed work to IAM-represented employees. Specifically, the Employer maintains, among other things, that it relied on its past practice of using the 20-ton rule in assigning the disputed work to IAM-represented employees. It also contends that its assignment of the disputed work was consistent with the terms of the 1989 Agreement.

The IAM agrees with the Employer that the work is properly assigned to its employees based on past practice; however, it does not rely on the 20-ton rule but rather contends that it is entitled to the disputed work under the "replacement" clause of the 1989 Agreement. The IAM also contends that the IBEW misinterprets the equipment cooling provision in the 1989 Agreement.[4]

The IBEW contends that because the two, 20-ton air-conditioning units are used to cool rooms containing computers, the maintenance work for those units should be assigned to the IBEW under the 1989 Agreement's "units for equipment cooling" exception.

D. Applicability of the Statute

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the Act, there must be reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work among rival groups of employees and that a party has used proscribed means to enforce its claim to the work in dispute. See *Electrical Workers Local 3 (Slattery Skanska*), 342 NLRB 173, 174 (2004). Additionally, the Board will not proceed under Section 10(k) if there is an agreed-upon method for voluntary adjustment of the dispute. Id. For the reasons stated below, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, and that the dispute is properly before the Board for determination.

1. Competing claims for the work

All three parties have stipulated that the IAM and the IBEW have made competing claims for the air-conditioning maintenance work on the two units at issue here. Accordingly, we find that competing claims to the disputed work exist.

2. Use of proscribed means

The parties do not dispute that there is reasonable cause to believe that a party used proscribed means to enforce its claim to the work. All parties have stipulated that IAM president, Tim Smith, threatened to picket the facility with an object of forcing the Employer to assign the disputed work to the IAM rather than the IBEW. This establishes reasonable cause to believe that the IAM has used proscribed means to enforce its claim to the work in violation of Section 8(b)(4)(D). See *Bricklayers Local 1 (Cretex Construction Services)*, 343 NLRB 1030, 1032 (2004).

[4] Notwithstanding the parties' initial stipulation, the IAM now further contends that the cooling unit work on the two 15-ton units assigned to the IBEW also belongs to the IAM-represented employees pursuant to the replacement clause of the 1989 Agreement. We need not address that issue. The stipulated work in dispute and the IAM's threat involved the maintenance of the 20-ton air-conditioning units only, and that is the sole issue that we decide in this case.

3. No voluntary method for adjustment of dispute

The parties stipulated, and we find, that there was no agreed-upon method for the voluntary resolution of this dispute that would bind all the parties.

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 Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577 (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. Certification and collective-bargaining agreements

The parties stipulated that the work in dispute is not specifically covered by any Board certification or order. The Employer is currently a party to separate collective-bargaining agreements with both the IAM and the IBEW. Neither agreement specifically covers the work in dispute. Therefore, the factor of certification and collective-bargaining agreements does not favor an award to employees represented by either Union.

2. Employer preference and current assignment

The Employer prefers to assign, and has assigned, the disputed work to employees represented by the IAM. We therefore find that these factors favor an award of the disputed work to the IAM-represented employees.

3. Employer past practice

The Employer has a long-established practice of using a 20-ton rule when assigning air-conditioning work. As explained above, under this rule, the Employer assigns the maintenance work for all air-conditioning units 20 tons or greater to employees represented by the IAM and all units less than 20 tons to the IBEW-represented employees. The Employer currently uses this 20-ton rule. The Employer also applies the 1989 Agreement in making air-conditioning maintenance work assignments. The Employer's assignment of the disputed work on the two units to the IAM-represented employees is consistent with both the 1989 Agreement and the 20-ton rule.[5] Therefore, under either the Employer's practice of applying the 1989 Agreement or the 20-ton rule, the factor of past practice supports awarding the disputed work to IAM-represented employees.[6]

4. Area and industry practice

The parties presented no evidence with respect to area or industry practice. Thus, we find that this factor does not support an award of the disputed work to either group of employees.

5. Economy and efficiency of operations

The Employer argues that economy and efficiency of operations favors assigning the work to employees represented by the IAM. The Employer reasons that its well-established practice of applying both the 1989 Agreement and the 20-ton rule have made its operations more efficient by preventing jurisdictional disputes. Therefore, it reasons that because its assignment of the work to the IAM is consistent with its past practice, this will have a positive impact on its operational efficiency. The record, however, contains no evidence that employees represented by either Union can perform the disputed work more efficiently. Because the Employer has not adduced any relevant evidence regarding this factor, we find that this factor does not favor awarding the work in dispute to the IAM-represented employees.

6. Job loss

The Board will sometimes consider job loss when making an award of the work in dispute. See, e.g., *Iron Workers Local 40 (Unique Rigging)*, 317 NLRB 231, 233 (1995). The Employer argues that if the work is awarded to the employees represented by the IBEW, the loss of six to eight IAM jobs is likely, but provides no evidentiary support for this claim. The evidence here is thus insufficient to establish that awarding the work to the IBEW employees would result in the loss of IAM jobs. Accordingly, we find that this factor does not favor awarding the work to the IAM-represented employees.

[5] The Employer and the IAM interpret the 1989 Agreement differently with respect to the 20-ton rule. While the Employer interprets the agreement to incorporate the 20-ton rule, the IAM contends that the agreement supersedes the rule. Although we find that the assignment of the disputed work to the IAM is consistent with the 1989 Agreement, we do not pass on the issue of whether the 1989 Agreement incorporates or supersedes the 20-ton rule.

[6] There is no support for the IBEW's claim that the disputed work should be assigned to the IBEW under the 1989 Agreement's "units for equipment cooling" exception. Witnesses for the Employer testified that the parties to the 1989 Agreement did not intend the "units for equipment cooling" exception to apply to units that cooled rooms containing computers. The Employer's senior facilities engineer, who participated in the negotiations for the 1989 Agreement, explained that the language in the second exception was intended to cover work the IBEW had been performing on certain cooling units that were attached to pieces of equipment. Further, the evidence shows that since 1995, several units, newly installed for the purpose of cooling rooms with computers, have been assigned to employees represented by the IAM.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the IAM are entitled to continue performing the work in dispute. We reach this conclusion relying on the factors of employer preference, current assignment, and past practice. In making this determination, we award the work to employees represented by the IAM, not to that labor organization or to 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.

Employees of Lockeed Martin Aeronautics Company, represented by the International Association of Machinists and Aerospace Workers, District Lodge 776, are entitled to perform the maintenance on two, 20-ton air-conditioning units in building 8, bay 2 data center at the Employer's Fort Worth, Texas facility.

Dated, Washington, D.C. April 30, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD