

Local 1485, Northwest Indiana and Vicinity District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO; and United Brotherhood of Carpenters and Joiners of America, AFL-CIO and C. J. Reinke & Sons, Inc. and Local 81, District Council 57, Laborers International Union of North America, AFL-CIO. Cases 25-CD-204 and 25-CD-205

March 5, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges tiled by C. J. Reinke & Sons, Inc., herein called the Employer, alleging that Local 1485, Northwest Indiana and Vicinity District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called collectively the Respondents, and individually Local 1485, the District Council, and the International, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees represented by the Respondents rather than to employees represented by Local 81, District Council 57, Laborers International Union of North America, AFL-CIO, herein called the Laborers.

Pursuant to notice, a hearing was held before Hearing Officer Steve Robles on November 6, 1980. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, an Indiana corporation with its principal place of business in South Bend, Indiana, is engaged as a general contractor in the building and construction industry. During the past year the Employer purchased materials from outside the State having a value of \$50,000. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

We find that Local 1485, Northwest Indiana and Vicinity District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO; United Brotherhood of Carpenters and Joiners of America, AFL-CIO; and Local 81, District Council 57, Laborers International Union of North America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts of the Dispute

The Employer is a general contractor, engaged in commercial, industrial, and institutional construction in northern Indiana and southern Michigan. It hires laborers and carpenters directly on its jobsites and has contracts with the labor organizations which represent these categories of employees. Its contract covering carpenters consists of a memorandum of agreement with the District Council, effective June 1, 1978, under which the Employer adopted the agreement between the District Council and an employer association. The most recent term of the District Council's contract extends from June 1, 1980, through May 31, 1981. The Employer's contract covering laborers is through membership in an employer association which bargains through the Laborers negotiating committee, Associated General Contractors of Indiana, Inc., which has a contract with the Laborers' International Union of North America, State of Indiana District Council, for and on behalf of its affiliated local unions, including Local 81. The most recent Laborers contract is effective April 1, 1979, and expires March 31, 1982.

In the spring of 1980: the Employer began construction of a savings and loan building at Michigan City, Indiana. In connection with the construction, the Employer used Morgan scaffolding, which it owned and transported to the jobsite. This particular type of scaffolding consists of steel towers. A foundation is prepared on the ground; the towers are assembled on the ground, then raised, usually by forklift, set in position, braced, and tied off to the building. The scaffold at Michigan City was more than 14 feet tall.

In the past the Employer had used laborers to erect metal scaffolding, and it assigned the scaffolding work at Michigan City to laborers. They began to erect the scaffold on or about September 1, 1980. The business representative of Local 1485 learned that laborers were doing the work from the carpenter steward on the job. Thereafter, a representative of the District Council communicated with the Employer and asserted the work should

be assigned to carpenters. The Employer then made a formal award of the work to employees represented by the Laborers by letter dated September 5. On or about September 10, the Local 1485 business representative called the International and asked it to try to resolve the dispute over the scaffolding. An International representative came to the area and met with a representative of the Laborers International. Each organization claimed the scaffolding work, and the matter was not resolved.

The laborers completed erection of the scaffold, and carpenters worked on the site without incident until October 8. During at least some of the time preceding October 8, carpenters used the scaffold while performing carpenter work.

On October 8, the carpenters on the job refused to perform any work requiring use of the scaffold. The Employer reassigned the carpenters to work on the ground and laid off three of the seven carpenters for lack of ground work. On October 9, the Employer's president met with the carpenters at the site and asked them to go on the scaffold. He stated if they did not, it would be necessary to replace them. On October 10, the president again asked the carpenters to perform work requiring use of the scaffold. They refused and were laid off.

According to witnesses presented by the Employer, the carpenters left the scaffold because of the dispute over its erection, and agents of Local 1485 indicated that the International had directed the action.² According to witnesses presented by the Respondents, the carpenters left the scaffold for safety reasons, and no reference was made to the International.³

The week following October 10, the Employer hired three carpenters. One, who was employed as foreman, was a union member; the other two were not union members.

Agents of Local 1485 and of the District Council visited the jobsite on several occasions between October 15 and October 27. There is conflicting

¹ Representatives of the two Internationals also participated in a meeting of the Northwest Indiana business trades on October 23 in an unsuccessful effort to end the dispute.

² The Employer's job superintendent testified that on October 8 the Local steward said he had been told by the Local business representative to remove the carpenters from the scaffold by order of the International. The superintendent also testified that later that day the Local business representative came to the site and met with the carpenters, in the presence of the superintendent, and told them he had received a call from the International not to do any work using the scaffold because of the dispute as to who should erect scaffolding. The Employer's president testified that the superintendent had told him of the business representative's remarks, and he later talked to the representative on the telephone. In that conversation the representative said the "man from Washington" told him to take the carpenters off the scaffold.

³ The Local steward and the business representative denied making any reference to the International or a "man from Washington"; and the steward testified the carpenters left the scaffold because of unsafe conditions

testimony as to what occurred during these visits. According to the testimony of the Employer's witnesses, the foreman was refused a union permit; the superintendent was threatened that union charges would be brought against him; the foreman and the superintendent were threatened with physical harm; and the nonunion carpenters were told they could "get in trouble." The Respondents' witnesses denied threatening physical harm, denied refusing the foreman a permit, and explained that they simply reminded the superintendent and foreman of union bylaws and possible penalties for violating the bylaws.

On October 27, the nonunion carpenters quit work, and, so far as the record shows, the Employer had no carpenters on the jobsite after that time.

On October 30, the Employer called the office of the International in Washington, D.C., to discuss the problem. A person to whom he attempted to explain the situation asked why the Company had assigned the work to the Laborers, declared it was carpenters' work, and remarked, "No wonder you got a problem."

B. The Work in Dispute

The work in dispute involves the erection of Morgan scaffolding at the Employer's construction site at Michigan City, Indiana.

C. Contentions of the Parties

The Employer contends that the Respondents have induced its carpenter employees to refuse to perform work requiring use of the scaffold at Michigan City, with an object of forcing the Employer to assign the disputed scaffolding work to employees represented by the Respondents. It also asserts that the Respondents have engaged in threatening and harassing tactics to enforce the work stoppage. With respect to assignment of the disputed work, the Employer argues that relevant factors support assignment to employees represented by the Laborers. The Employer emphasizes employer preference and practice, economy and efficiency, and the laborers' extensive experience and familiarity with the type scaffolding being used. It points out that the Laborers' jurisdictional guidelines, referred to in the Laborers' bargaining contract, specifically asserts jurisdiction over "Morgan" scaffolding.

The Respondents take the position that the carpenters left work at Michigan City because of safety considerations. With respect to the work assignment, they argue that the work requires the basic tools, skills, and experience of carpenters to assure safety, and that carpenters can perform the work more efficiently. They maintain that past ju-

jurisdictional decisions, particularly a basic 1920 decision of the National Joint Board for Settlement of Jurisdictional Disputes, support their position. In addition, they submit that the award in this case should not be limited to the present site, but should also apply to future construction sites.

D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

Testimony was presented in this case that under the leadership of Local 1485 the carpenters left the scaffold on October 8 because of the dispute as to who should erect the scaffolding, and that agents of the District Council threatened employees in support of the work stoppage. Conflicting testimony was also presented, but it is unnecessary to resolve the question of credibility in order to proceed to a determination of the dispute. In a 10(k) proceeding the Board is not required to find that the unfair labor practice alleged has occurred, but need only find that reasonable cause exists to believe that there has been a violation of Section 8(b)(4)(D). The Board may consider contradicted testimony in finding reasonable cause.⁴

The Employer and the Respondents stipulated that there is no agreed-upon method for resolving the dispute.⁵

On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred⁶ and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

⁴ See *Construction, Production & Maintenance Laborers' Union, Local No. 383, affiliated with Laborers' International Union of North America, AFL-CIO (Floor Covering Specialists, Incorporated)*, 222 NLRB 950 (1976); *Local 2, International Brotherhood of Electrical Workers, AFL-CIO (The Welsbach Corporation)*, 218 NLRB 92 (1975); *Local Union No. 334, Laborers International Union of North America, AFL-CIO (C. H. Heist Corporation)*, 175 NLRB 608 (1969).

⁵ The Laborers did not appear at the hearing in this proceeding.

⁶ There is no direct testimony that the International directed or participated in the carpenters' refusal to work on October 8 and thereafter, but there is contradicted evidence that Local 1485 represented that the International directed the work stoppage. (Regarding hearsay evidence in Board proceeding, see *RJR Communications, Inc.*, 248 NLRB 920 (1980); *Alvin J. Bari and Co., Inc.*, 236 NLRB 242 (1978). There is also evidence that the International was involved with the dispute over erection of the scaffolding from sometime during September 1980. Accordingly, we see no reason at this stage of the proceeding to dismiss the International from the case as requested by the Respondents' motion to dismiss.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.⁷ The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.⁸

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

1. Collective-bargaining agreements

The Laborers and the Respondent have contract support for their claims to the disputed work.

The Laborers contract covers "all work coming within the recognized jurisdiction of the Laborers' International Union of North America as set forth in their Manual of Jurisdiction as amended in October—and as now included in Section 1 of the Jurisdictional Guidelines Booklet . . ." Section 1 of the booklet specifically refers to Morgan scaffolding in describing scaffolding work.⁹

The District Council's contract includes scaffolding in the coverage of the agreement. It states:

Scaffolds over fourteen feet (14) in height or any special designed scaffolds or those built for special purposes shall be erected and dismantled from the base by carpenters.

2. Company and industry practice

Testimony was presented that in the geographic area involved laborers and carpenters have performed the disputed work. It has been the Employer's practice for about 35 years to use laborers to erect Morgan and other metal scaffolding.

3. Relative skills

The evidence indicates that particular skills are not required to perform the disputed work and that both laborers and carpenters are capable of performing it.

⁷ *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

⁸ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

⁹ The section reads, in part:

Scaffold erection, the total erection, building and the installation, planking, bolting, lining, leveling, bracing and the total dismantling of same; the building, planking, installation and removal of all staging, swinging and hanging scaffolds, Morgan, scaffolding, including maintenance thereof for all lathers, plasterers, brick layers, masons and other Construction Trade Crafts; the preparation for foundations or mud sills for all scaffolding, as well as maintenance shall be done by Laborers.

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4. Economy and efficiency of operation

There appear to be economy and efficiency considerations favoring assignment of the scaffolding work to either laborers or carpenters. The Employer argues that its laborers are trained and experienced in performing the work, and therefore do it **promptly** and efficiently. It further argues that because of the flexibility of laboring work and the ability of laborers to perform various jobs at the **site** the Employer can maintain a more efficient work schedule by assigning scaffolding work to the laborers and using carpenters for work requiring their particular skills.

The Respondents argue to the contrary, that because of the carpenters' particular skills they could **perform** the scaffolding work in a sounder and **safer** way and in less time than laborers. The Respondents also assert that apprentice carpenters could be used for the disputed work.

Conclusion

Upon the record as a whole, and after full **consideration** of all relevant factors involved, we conclude that employees who are represented by the Laborers are entitled to perform the work in **dispute**. We reach this conclusion **relying particularly** on the Employer's longstanding practice of assigning the work to those employees, its satisfaction **with** the performance of those employees, and the absence of other factors which clearly would **dictate** award of the work to employees represented by the Respondents. In making this **determination**, we are awarding the work in question to employees who are represented by Local 81, District Council 57, Laborers' International Union of North America, AFL-CIO, but not to that Union or its

members. The present determination is limited to the particular controversy which gave rise to this **proceeding**.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of C. J. Reinke & Sons, Inc., who are represented by Local 81, District Council 57, Laborers' International Union of North America, AFL-CIO, are entitled to perform the erection of Morgan scaffolding at the Michigan City **jobsite**.

2. Local 1485, Northwest Indiana and Vicinity District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require C. J. Reinke & Sons, Inc., to assign the disputed work to employees they represent.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 1485, Northwest Indiana and Vicinity District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and United Brotherhood of Carpenters and Joiners of America, AFL-CIO, shall notify the Regional Director for Region 25, in writing, whether or not they will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination. *