

Harley-Davidson Motor Co., Inc.,¹ Employer-Petitioner, and Local 209, International Union, Allied Industrial Workers of America, AFL-CIO and Tool and Die Makers, Lodge No. 78, of District 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO

Tool and Die Makers, Lodge No. 78, of District 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO and Harley-Davidson Motor Co., Inc. and Local 209, International Union, Allied Industrial Workers of America, AFL-CIO. Cases 30-UC-120 and 30-CD-73

March 3, 1978

**DECISION, DETERMINATION OF
DISPUTE, AND ORDER**

**BY MEMBERS PENELLO, MURPHY, AND
TRUESDALE**

This is a consolidated proceeding under Sections 9(b) and 10(k) of the National Labor Relations Act, as amended. Harley-Davidson Motor Co., Inc., herein called the Employer, filed both the petition in Case 30-UC-120 seeking unit clarification and the charge in Case 30-CD-73. In the charge, the Employer alleged that Tool and Die Makers, Lodge No. 78, of District 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO, herein called IAM, has 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 IAM, rather than to employees represented by Local 209, International Union, Allied Industrial Workers of America, AFL-CIO, herein called AIW.

Pursuant to an order consolidating cases for purposes of hearing and a notice of hearing issued by the Regional Director for Region 30, a combined hearing was held before Hearing Officer Kenneth N. Rock on May 11 and 23, and September 1 and 6, 1977. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Following the hearing, the Regional Director issued an order consolidating Cases 30-UC-120 and 30-CD-73 and transferring them to the Board for consideration. Thereafter, the Employer, IAM, and AIW filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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 to the following facts: The Employer, a Wisconsin corporation and a subsidiary of AMF, Inc., with its principal offices and plants located in and about the Milwaukee, Wisconsin, area, is engaged in the manufacture of motorcycles, golf carts, and related items. During the past calendar year, a representative period, the Employer sold and shipped goods valued in excess of \$50,000 from its Milwaukee facilities directly to points located outside the State of Wisconsin. During that same period, the Employer purchased and received directly from points located outside the State of Wisconsin goods valued in excess of \$50,000. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Tool and Die Makers, Lodge No. 78, of District 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO, and Local 209, International Union, Allied Industrial Workers of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts

At its facilities in Milwaukee, Wisconsin, the Employer is engaged in the manufacture of motorcycles, golf carts, and related items. As part of its manufacturing operations, the Employer designs, produces, and tests prototype vehicles. Two departments of the Employer's Milwaukee facilities are involved in this proceeding: department 43, also known as the experimental department, and department 16, also known as the toolroom.

In approximately 1939, the Employer voluntarily recognized AIW as the representative of "all its bargaining unit employees." In 1954, a Board-conducted election was held among the employees in department 16, which was then composed of both the toolroom and a model shop, and IAM was certified

¹ The names of the parties appear as amended at the hearing.

as representative of those employees. In 1955, another Board-conducted election was held and AIW was certified as representative of "all production and maintenance employees" excluding, *inter alia*, those employees that were certified to be represented by IAM in the Board's certification of 1954.

Prior to 1955, and at the time of the above-mentioned elections, both department 16 and department 43 were located at the Employer's Juneau Avenue, Milwaukee, facility. After the elections, the Employer moved the toolroom to its Capital Drive, Milwaukee, facility, and the model shop ceased to exist. Department 43, the employees of which were then and are now part of the overall AIW bargaining unit, remained at the Juneau Avenue facility.

The Employer, in producing prototype vehicles, first has a designer prepare a blueprint or sketch of an experimental part to be used in the prototype vehicle. The Employer's engineering department then prepares an engineering order, including the quantity of the parts to be produced and the delivery date. The engineering order is either assigned to a machinist employed by the Employer or is delivered to a subcontractor. Since the 1950's and continuing to date, the Employer, when utilizing its own employees to produce experimental parts, has assigned such work to employees in department 16 and department 43. Completed parts are assembled into prototype vehicles by employees in department 43.

In 1976, IAM filed a grievance under its collective-bargaining agreement with the Employer claiming that the Employer was violating IAM's jurisdiction by assigning the work of machining experimental parts to employees represented by AIW. Through four steps of the grievance procedure, the Employer denied any contract violation, and no resolution of the grievance was reached. On March 15, 1977, IAM sent a letter to the Employer stating that unless the Employer remedied the alleged violation of its jurisdiction, it would "exercise whatever economic means at [its] disposal, including strike, to remedy this violation."

B. *The Work in Dispute*

The work in dispute consists of the making of experimental parts which are assembled into prototype vehicles. The parties stipulated that examples of such experimental parts include flywheels, shafts, engine parts, transmission parts, cases, covers, manifolds, brake parts, wheel hubs, front and rear suspension parts, footboards, bumpers, instrument panel clusters, handlebar parts, seat clusters, brackets, and chassis parts. The parties further stipulated that "the assembly of these parts, the making of modifications, the fabricating and/or alternations

(sic) and the ultimate testing of vehicles" fall within AIW's jurisdiction and are not subjects of this dispute.

C. *Contentions of the Parties*

The Employer contends that at all times since the 1950's, it has retained and exercised the right to assign the making of experimental parts to employees of department 16, employees of department 43, or employees of outside subcontractors. At the hearing the Employer, through its attorney, expressed its preference that it be allowed to continue to assign work to whichever group of employees best fits its needs in terms of cost, time, and employee skills at the time such work must be performed.

AIW takes the same position as the Employer, contending that the Employer should remain free to assign work to employees represented by either Union or to employees of outside subcontractors.

IAM asserts that at the time it was certified to represent the employees in department 16, all of the disputed work, except that which was subcontracted, was performed by employees in department 16. On the basis of this asserted "original jurisdiction" over the disputed work, IAM contends that the work in dispute should be awarded to employees represented by it. In the alternative, IAM takes the position that the Board should permit the Employer to continue to assign the disputed work to whichever department has employees who are capable of performing the work and who are available at the time the work is to be done.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of 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 there is no agreed-upon method which is binding on all of the parties for the voluntary settlement of the dispute.

As stated above, IAM demanded the disputed work through four steps of the grievance procedure under its contract with the Employer. Thereafter, in a letter dated March 15, 1977, IAM threatened to take economic action, including a strike, in support of its demand. Based on the foregoing and the record as a whole, we find that IAM sought to force or require the assignment of the disputed work to employees represented by it, rather than to employees represented by AIW. Accordingly, we find reasonable cause exists to believe that IAM violated Section 8(b)(4)(D) of the Act. The parties stipulated at the hearing, and we find, that no agreed-upon method for the volun-

tary adjustment of this dispute exists to which all parties are bound.

In its petition for unit clarification, the Employer states that both IAM and AIW claim representation of the 12 employees in department 43 who are classified as experimental machinists. It is clear, however, that throughout these proceedings IAM has claimed the disputed work itself rather than any right to represent the employees in department 43 who perform the disputed work.² Although it is sometimes difficult to draw a distinction between work assignment disputes and controversies over which of two unions should represent certain employees,³ the record in this case establishes that the core of this controversy is a work dispute as opposed to a question concerning the representation of experimental machinists. Such a dispute may be resolved by the Board only in a proceeding under Section 8(b)(4)(D) of the Act.⁴ We therefore find that the instant dispute is properly before the Board for determination under Section 10(k) of the Act and, accordingly, we shall dismiss the petition for unit clarification.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to various relevant factors.

1. Certification and collective-bargaining agreements

On July 30, 1954, IAM was certified as the bargaining representative of the following appropriate unit: "All toolroom and model shop employees including tool and die makers, apprentices, toolroom machine operators, machine repairmen, tool and die heat treater, laborers, tool cut-off man, and tool crib attendant." On January 21, 1955, AIW was certified as the bargaining representative of "all production and maintenance employees" excluding, *inter alia*, "all those employees that were certified by the National Labor Relations Board to be represented by [IAM] on July 30, 1954." Following these certifications, the Employer entered into a series of collective-bargaining agreements with AIW and with IAM, the current agreements being for 3-year terms expiring June 30, 1977, and September 30, 1977, respectively. The agreement in effect between the Employer and IAM at the time this dispute arose

² IAM's grievance was based upon its demand for the disputed work as opposed to a demand for representation of the employees performing the work. In its responses to the grievance, the Employer addressed only the issue of jurisdiction over the work. IAM business agent Rudolph Poweleit testified at the hearing, "specifically, we want to make sure that the work we've been certified to represent remains with us. How it's done, how it's implemented is another matter." Counsel for IAM stated at the hearing, "our position is that . . . we are entitled to the work and what happens to the employees is the responsibility of the Employer. We claim that work was

contains the following description of IAM's jurisdiction:

The Company agrees that the making of all models, tools, dies, jigs, fixtures, machinery, and the servicing and reconditioning thereof which was historically and was normally performed by the employees covered by this Agreement and all other work which was historically and is normally performed by Harley-Davidson employees covered by this Agreement is work recognized as being within the jurisdiction of [IAM].

The agreement in effect between the Employer and AIW does not contain a specific description of AIW's jurisdiction. The IAM agreement contains the job classification "Tool Room Machinists," and the AIW agreement contains the job classification "Experimental Machinist."

As noted above, the record clearly indicates that the Employer, since the dates of the respective certifications, has assigned the disputed work at various times to employees represented by IAM, as well as to employees represented by AIW, and that the parties themselves have never delineated the jurisdictions of the respective Unions with regard to the disputed work. Furthermore, neither of the collective-bargaining agreements specifically covers the work in dispute. Accordingly, our review of the certifications and the collective-bargaining agreements reveals that these factors are not helpful to a determination of this dispute.

2. Employer's past practice and preference

It is uncontroverted that, since at least the 1950's, it has been the Employer's consistent practice to assign the disputed work to employees in both department 16 and department 43, as well as to employees of outside subcontractors. Although it appears that the Employer has gradually improved the quality and quantity of machinery needed to perform the disputed work in department 43, and although the Employer has gradually decreased the amount of disputed work assigned to the employees in department 16, it is undisputed that the employees in both departments have been and continue to be assigned some of the disputed work. As noted above, the Employer has expressed its preference that it be allowed to continue to assign the disputed work to whichever group

misassigned . . . and it's work that normally came within our jurisdiction and we want the work back." The Employer-Petitioner presented no evidence to show that IAM claimed to represent any of the employees in department 43.

³ *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261 (1964); *T.I.M.E.-DC, Inc.*, 225 NLRB 1175 (1976); cf. *McDonnell Company*, 173 NLRB 225 (1968).

⁴ *T.I.M.E.-DC, Inc.*, *supra*; *Pacific Northwest Bell Telephone Company*, 211 NLRB 1021 (1974), and cases cited therein.

of employees best meets its needs in terms of cost, time, and employee skills at the time such work is to be done. Accordingly, the factors of the Employer's past practice and preference also do not favor an exclusive award of the work in dispute to employees represented by either Union.

3. Training and relative skills

The evidence establishes that in order to perform the disputed work, an employee must be trained as a machinist. Although employees from department 16 testified that until recently they were unaware that machinists were also employed in department 43, it is clear that machinists have been employed in both departments since at least the 1950's. It is undisputed that there are employees in both departments who have received training and possess the skills necessary to perform the disputed work. Consequently, we find that this factor is not helpful in resolving the instant dispute.

4. Economy and efficiency of operations

Neither Union presented evidence regarding the effect on economy and efficiency of an award to employees represented by one Union to the exclusion of employees represented by the other Union. The Employer asserts, and neither Union disputes, that economy and efficiency would best be promoted by allowing the Employer the flexibility to assign the disputed work, in accordance with its past practice, based upon its own assessment of cost, skills, and time factors. Considerations of economy and efficiency, therefore, do not aid us in making a determination of this dispute.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors, we conclude that none of the factors traditionally considered by the Board in resolving disputes of this nature favors an award to the employees represented by one Union to the exclusion of employees represented by the other Union.⁵ Under such unusual circumstances, it is within the Board's power to preserve in the Employer the right to assign the work, in accordance with its past practice, to employees represented by

⁵ Member Murphy finds that the contractual recognition of the IAM's work jurisdiction and the performance of the disputed work by the employees in department 16 warrant assignment of that work to such employees in this proceeding, and she would so order. However, in view of the IAM's alternative position that if such award is not made then it agrees with the Employer and the AIW that the Employer should continue its present practice, she concurs in the award herein which accords with the agreement of all interested parties.

Members Penello and Truesdale note that although the contractual recognition of IAM's work jurisdiction, quoted above, refers to work "which

either Union or to employees of subcontractors, depending on the circumstances confronting the Employer when the work must be done.⁶ An affirmative award is, therefore, made to the employees represented by either of the Unions involved and to employees of those employers to which the Employer subcontracts the disputed work, but to no group of employees exclusively. In making this determination, we are awarding the work in question to employees who are represented by Tool and Die Makers, Lodge No. 78, of District 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO, and to employees represented by Local 209, International Union, Allied Industrial Workers of America, AFL-CIO, but not to either Union or its members, and to employees of the Employer's subcontractors.

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 Harley-Davidson Motor Co., Inc., who are represented by Tool and Die Makers, Lodge No. 78, of District 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO; and employees of Harley-Davidson Motor Co., Inc., who are represented by Local 209, International Union, Allied Industrial Workers of America, AFL-CIO; and employees of those employers to which Harley-Davidson Motor Co., Inc., subcontracts the work of making experimental parts are entitled to perform the work of making experimental parts which are assembled into prototype vehicles.

2. Tool and Die Makers, Lodge No. 78, of District 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Harley-Davidson Motor Co., Inc., to assign the disputed work exclusively to employees represented by that labor organization.

3. Within 10 days from the date of this Decision, Determination of Dispute, and Order, Tool and Die

was historically and was normally performed" by the employees in department 16, the record establishes that the work in dispute has been performed by both the employees in department 16 and the employees represented by AIW since at least the dates of the respective certifications. Members Penello and Truesdale, therefore, do not agree with Member Murphy that this factor supports an award of the work exclusively to the employees in department 16.

⁶ *International Association of Machinists and Aerospace Workers, AFL-CIO, Lodge No. 70 (General Electric Company)*, 233 NLRB No. 51 (1977).

Makers, Lodge No. 78, of District 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO, shall notify the Regional Director for Region 30, in writing, whether or not it 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 other than in accordance with the award of the work herein.

ORDER

It is hereby ordered that the petition for clarification in Case 30-UC-120 be, and it hereby is, dismissed.