

Sheet Metal Workers' International Association, Local Union No. 41, AFL-CIO¹ (B & W Metals Company, Inc.) and Metal Polishers, Buffers, Platers and Allied Workers International Union, Local No. 68, AFL-CIO. Case 25-CD-172

August 4, 1977

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND WALTHER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed on December 13, 1976, by Metal Polishers, Buffers, Platers and Allied Workers International Union, Local No. 68, AFL-CIO, hereinafter called Metal Polishers, alleging that Sheet Metal Workers' International Association, Local Union No. 41, AFL-CIO, hereinafter called Respondent or Local 41, has violated Section 8(b)(4)(D) of the Act by threatening, coercing, and restraining B & W Metals Company, Inc., hereinafter called the Employer or B & W, with an object of forcing or requiring the Employer to assign certain work to employees represented by the Respondent rather than to employees represented by the Metal Polishers.

Pursuant to notice, a hearing was held before Hearing Officer Arthur G. Lanker on February 16, 1977. Respondent and Metal Polishers 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. Thereafter, Respondent and Metal Polishers 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 they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, including the briefs of Respondent and Metal Polishers, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated that the Employer, an Ohio corporation, has its principal offices in Fairfield, Ohio. It is engaged in the business of manufacturing and installing stainless steel food servicing equipment. In the operation of its business, the Employer

annually receives goods and materials from outside the State of Ohio² 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 it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Sheet Metal Workers and Metal Polishers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Dispute*

The work in dispute is the grinding, buffing, and polishing of weld seams on stainless steel food-servicing equipment at the Hyatt Regency jobsite in Indianapolis, Indiana.

B. *Background*

B & W is engaged in the design, manufacture, and, to some extent, installation of custom food service equipment. At its plant in Fairfield, Ohio, the Employer manufactures equipment, such as tables, sinks, dishwashing equipment, service counters, and ventilation hoods.

Since its beginning in 1947, the Employer has had its production employees represented in two separate units, one represented by Local 224 of the Sheet Metal Workers' International Association, hereinafter called Local 224, and the other represented by Metal Polishers. Members of Local 224 do the notching, shear work, break work, layout work, welding bending, and assembling of the equipment. Members of Metal Polishers are responsible for the grinding, buffing, and polishing of the equipment. The Employer has collective-bargaining agreements with Metal Polishers and, through an association, with Local 224.

In mid-1975, the Employer was granted a contract to install kitchen equipment at the Hyatt Regency House in Indianapolis, Indiana. The jobsite was within the territorial jurisdiction of Respondent. In November 1976, the Employer sent two of its sheet metal workers, William Hancock and Joseph Tucker, members of Local 224, to perform the necessary

"Indiana" rather than "Ohio" when reading the commerce stipulation into the record.

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

² We hereby correct the Hearing Officer's inadvertent error in using

welding on the kitchen equipment being installed at the Hyatt House.³ On November 18, 1976, the Employer sent John Michel, a member of Metal Polishers, to do the grinding and polishing of welds on the equipment being installed at the Hyatt House job.

When Michel arrived at the jobsite, he looked up Hancock and told him that he had come to do the polishing. Hancock stated that he would have to inform the union steward (i.e., the steward for Local 41) that Michel had arrived to do the work. According to Michel, Billy Ginn, union steward for Local 41, then came over, took his name, and stated he must call the business agent for Local 41. Shortly thereafter, again according to Michel, Ginn returned and stated that he (Michel) was not going to do the work with the union card that he carried. According to Michel, he understood that "the sheet metal workers wouldn't let me work." Michel testified that Ginn informed him that he could not work because Metal Polishers was not a part of the building trades. According to Ginn, he only informed Michel that Local 41 had men qualified to do the work and that that kind of work (i.e., polishing) was done by members of their local. Ginn denied that he told Michel he could not work because Metal Polishers was not a part of the building trades.

After speaking with Ginn, Michel called Jim Watson, the business agent for Metal Polishers. Watson stated he would make some phone calls on Michel's behalf, but he did not call back. Thereupon, Michel called Wedendorf, the Employer's president. Wedendorf informed Michel that he should remain at the jobsite until 2 or 3 p.m. to see what happened and, thereafter, if the matter was not resolved, come home. Michel did not work that day and that afternoon returned to the plant in Fairfield.

Because of the aforementioned situation, the Employer was unable to complete the work and, about mid-January 1977, another contractor was used to perform the grinding and polishing.

C. Contentions of the Parties

Metal Polishers contends that the work in dispute has traditionally been assigned to its members by the Employer and that the collective-bargaining agreements, company practice, and skills and efficiency favor the work being awarded to them. Metal Polishers argues that this case is nearly identical to *Sheet Metal Workers' International Association, Local Union No. 141, AFL-CIO*, 179 NLRB 995 (1969), involving the same employer, the same or similar work in dispute, and a dispute between Metal

Polishers and a local of Sheet Metal Workers. In that case, the Board awarded the work in dispute to Metal Polishers, and Metal Polishers argues that the same result is dictated here.

Respondent contends that there is no reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. It admits to claiming the work in dispute but denies that it threatened, coerced, or restrained anyone in order to have the work assigned to it. On the merits of the dispute, it alleges that the collective-bargaining agreements, skills and efficiency, and especially area practice favor the work being awarded to its members.

D. Applicability of the Statute

Before the Board may proceed to 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 for the voluntary settlement of the dispute.

As to the former, it is clear that both Unions are disputing the assignment of the work of grinding and polishing the weld seams on stainless steel food-servicing equipment at the Hyatt Regency jobsite. Contrary to Respondent's contention, we are satisfied that Michel's testimony supports a reasonable belief that Respondent—through its steward, Ginn—did, in fact, coerce and restrain Michel with an object of forcing the Employer to assign the work in dispute to members of Respondent. Michel had traveled from Fairfield, Ohio, to Indianapolis, Indiana, in order to perform the grinding and polishing on the equipment being installed by the Employer. It is clear that Michel, after speaking with Ginn, did not perform the work in dispute and we are doubtful that he, having traveled a good distance, would have refrained from doing the work solely because Respondent had expressed a claim that it was entitled to do the work in dispute. Ginn's statements reasonably conveyed to Michel that he could suffer consequences from attempting to do the work, and Michel's failure to risk challenging Ginn (by attempting to work) to determine what Local 41 would do does not render our finding of reasonable cause inappropriate.

After learning that Respondent would not let him do the work, Michel—as was reasonably foreseeable—informed the Employer that he was being prevented from performing the work. Thus, Respondent Union's action of preventing Michel from working gives rise to a reasonable cause to believe that a violation of the Act has occurred and that the

³ B & W's contract with Local 224 provides that when B & W performs work within an area covered by another agreement (i.e., within the territory

of another local of the Sheet Metal Workers) it is permitted to send no more than two of its own employees—sheet metal workers—to perform the work.

dispute is properly before the Board for determination.

As to the latter, there is no evidence that all the parties herein have an agreed-upon method for the voluntary settlement of the dispute.

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. Collective-bargaining agreements

The Employer has current collective-bargaining agreements with Metal Polishers and with Local 224 of Sheet Metal Workers.

The Employer's contract with Metal Polishers states that that Union is "sole and exclusive bargaining representative of all Metal Polishers, Buffers, Platers, and their Helpers in the employ of the company." Respondent, of course, has no contract with the Employer, but it argues that it is the third-party beneficiary of Local 224's contract. Assuming this to be true, it is nonetheless clear that all parties to the contracts have—since the beginning of B & W—interpreted the contracts to provide, and implemented them as providing, that the metal polishers do the grinding, buffing, and polishing of the weld seams on the Employer's equipment. Accordingly, we find that the collective-bargaining agreements weigh in favor of awarding the work to employees represented by Metal Polishers.

2. Company practice

Don Barnhill, vice president of B & W, testified that the Employer's practice has always been—for both inside and outside work—to have metal polishers perform the grinding, buffing, and polishing. Thus, company practice clearly weighs in favor of awarding the work to employees represented by Metal Polishers.

3. Area practice

Evidence presented by Respondent—especially the testimony of Joseph O'Neill, Respondent's business agent—indicated that in Indianapolis, Indiana, the work of grinding and polishing is normally performed by members of Local 41. There was disputed testimony as to whether a local of Metal Polishers exists in Indianapolis and whether members of Metal Polishers had ever performed the work in dispute previously in the Indianapolis area. It would appear that the area practice in Indianapolis favors awarding the work to Respondent. However, when a job has been awarded to an employer from another State

or another area and that employer uses its own employees in performing the work, the area practice prevalent where the jobsite is located cannot be considered determinative.

4. Skills and efficiency of operation

Barnhill testified that, among B & W's employees, only members of Metal Polishers have the requisite skills to perform the work in dispute. Similarly, Barnhill testified that it is generally more efficient for the Employer to use metal polishers to perform the grinding and polishing. However, Respondent's witnesses testified that, at least in the Indianapolis area, sheet metal workers are skilled in the grinding and polishing of weld seams. Further, Respondent's witnesses stated that, in Indianapolis, it would be as efficient to use members of Local 41 and that, by so doing, travel expenses from Fairfield, Ohio, to Indianapolis would be eliminated.

Based on this evidence, it appears that both groups of workers possess the requisite skills to perform the work in dispute and that both groups could perform the work with equal efficiency. Accordingly, the factors of skills and efficiency of operation favor neither group and are neutral in resolving the dispute before us.

Conclusion

Having considered the pertinent factors present herein, we conclude that employees who are represented by Metal Polishers are entitled to perform the work in dispute. This assignment is consistent with the Employer's initial assignment, the collective-bargaining agreements, and company practice. Skills and efficiency of operation favor neither group. As heretofore noted, the area practice in Indianapolis, Indiana, would appear to favor awarding the work to Respondent, but this single factor, under the circumstances herein, is neither determinative nor sufficient to outweigh the factors favoring awarding the work to employees represented by Metal Polishers. In making our determination, we are awarding the work in question to employees represented by Metal Polishers, but not to that Union or its members. This determination is limited to the particular controversy giving rise to this dispute.

DETERMINATION OF DISPUTE

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

1. Employees employed by B & W Metals Company, Inc., who are represented by the Metal Polishers, Buffers, Platers and Allied Workers International Union, Local No. 68, AFL-CIO, are entitled to perform the work of grinding, buffing, and polishing weld seams on stainless steel food-servicing equipment at the Hyatt Regency House jobsite in Indianapolis, Indiana.

2. Sheet Metal Workers' International Association, Local Union No. 41, AFL-CIO, is not entitled by means of conduct proscribed by Section 8(b)(4)(D) of the Act to force or require B & W Metals Company, Inc., to assign the aforementioned work to its members.

3. Within 10 days from the date of this Decision and Determination of Dispute, Sheet Metal Workers' International Association, Local Union No. 41, AFL-CIO, shall notify the Regional Director for Region 25, in writing, whether or not it will refrain from forcing or requiring B & W Metals Company, Inc., by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to employees represented by Sheet Metal Workers' International Association, Local Union No. 41, AFL-CIO, rather than employees represented by Metal Polishers, Buffers, Platers and Allied Workers International Union, Local No. 68, AFL-CIO.

CHAIRMAN FANNING, dissenting:

On the record before me, I am not satisfied that there is reasonable cause to believe that any violation of the Act has occurred. When metal polisher Michel arrived at the jobsite in Indianapolis, he was allegedly told by Local 41's union steward that he (Michel) was not going to do the work with the union card he carried. However, there is no indication that Ginn threatened Michel (or B & W) with any consequences should Michel perform the work in dispute. Michel never began or attempted to begin performing the work in dispute. Rather, he merely reported to his Union's business agent and his employer that he had been told he was not to do the work.

In my judgment, the evidence here is too tenuous to support a reasonable belief that a violation has occurred. Ginn's statement was ambiguous and appears more in the nature of a claim to the work than a threat of consequences should the work not be done by a sheet metal worker. As in *United Mine Workers of America, Local Union 1368 (Bethlehem Mines Corporation)*, 227 NLRB 819 (1977), where the Board found that a statement that there was a "potential for problems" in an employer's assignment of work was too ambiguous to support a reasonable belief that a violation occurred, I would find here that Ginn's statement—even as reported in Michel's testimony—falls short of establishing that Michel was threatened, coerced, or restrained regarding the work in dispute.