

Aerospace District Lodge No. 837, International Association of Machinists and Aerospace Workers, AFL-CIO and McDonnell Douglas Corporation and Local No. 1, International Brotherhood of Electrical Workers, AFL-CIO. Case 14-CD-561

June 8, 1979

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by McDonnell Douglas Corporation, herein called the Employer, alleging that Aerospace District Lodge No. 837, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called Respondent or the IAM, 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 its members rather than to employees represented by Local No. 1, International Brotherhood of Electrical Workers, AFL-CIO, herein called the IBEW.

Pursuant to notice a hearing was held before Hearing Officer R. Michael Lowenbaum on November 2 and 3, 1978. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduced evidence bearing on the issues.

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, and we find, that the Employer, a Maryland corporation with its principal place of business in St. Louis County, Missouri, is engaged in the manufacture and nonretail sale of sophisticated fighter aircraft, missiles, and astronautic equipment. During the past year, the Employer purchased goods 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 and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. LABOR ORGANIZATION INVOLVED

The parties stipulated and we find that Respondent and Local No. 1 of the IBEW are labor organization within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts of the Dispute

The Employer is a defense contractor which manufactures sophisticated aircraft, missiles, spacecraft, and various other aero- and astronautical vehicles and components. At its St. Louis, Missouri, facility it employs approximately 30,000 people, of whom 11,000 are represented in five separate bargaining units, including units represented by Respondent and by the IBEW. Respondent represents about 10,500 employees in a production unit. The IBEW represents 268 maintenance electricians.

In the fabrication of component parts of the products it manufactures, the Employer has increasingly, since the early 1950s, been using composite or bonded materials made of nonmetallic materials to improve the weight, strength, and heat resistance capabilities of these parts. In the production of a particular part, the Employer utilizes molds or bonding jigs on which layers of these nonmetallic materials, with epoxy resins between each layer, are laid out. After the laminates are compressed to the contour of the bonding jig, the laminates and the bonding jig, and the bag which envelopes both, are put into an autoclave, where they are subjected to high temperatures and pressure. This causes the resins to melt and bond the laminates together in the form of the bonding jig. In the "cooking" process it is important to have an even temperature distribution over the entire surface of the part to prevent hot or cold spots with a resultant imperfect bond. To monitor this temperature distribution, the company places heat sensing instruments, or thermocouples, at numerous locations on the bonding jig.

Thermocouples are simple devices consisting of two wires of dissimilar metals joined at one end. The joined end is attached to the bonding jigs by various means such as welding, tape, or screws. The other ends of the wires are attached to a terminal block affixed to the bonding jig. From the terminal block other wires run through what are called "pass throughs" on the autoclave to a heat recording device on the outside of the autoclave. During the "cooking" process the heat on the bonding jig causes a small electric current to pass through the thermocouples whereby the temperature on the various parts of the jig can be monitored outside the autoclave.

In December 1975, a maintenance electrician filed a grievance because workers other than maintenance electricians were installing and maintaining thermocouples on bonding jigs. That grievance culminated in an arbitration award issued on June 3, 1977, finding that the work belonged to the maintenance electricians. Shortly thereafter, the Employer assigned the installation and maintenance of the thermocouples to maintenance electricians represented by the IBEW. That assignment continued until November 1977. During the period when the electricians were assigned this work, the IAM filed a grievance protesting that assignment. That grievance also culminated in an arbitration award issue on September 26, 1977, wherein the arbitrator found that the work in question belonged to employees represented by Respondent. Following that decision, the Employer reassigned the disputed work to the production employees represented by Respondent. The IBEW again presented a grievance to the Employer which the Employer refused to accept.

Thereafter, when efforts failed to reach an amicable resolution of the dispute over the work,¹ the Company informed the parties that effective October 1, 1978, it would reassign the work to the electricians. The Company asserts that this reassignment was for the purpose of forcing the parties, especially the IAM, to sit down and negotiate a final resolution of the dispute. The dispute was not settled, however, and the IAM threatened to strike if the disputed work was not assigned to its members. The Company thereupon filed the charges in this proceeding.

B. *The Work in Dispute*

The work in dispute involves the installation and maintenance of thermocouples on bonding jigs which are used in the production of parts for fighter planes and other parts produced at the Employer's Lambert Field facility.

C. *The Contentions of the Parties*

The Employer contends that the work in dispute should be appropriately assigned to its production employees represented by the IAM, as this assignment follows the customs and practice at its facility and elsewhere in the industry. It further contends that the production employees possess the necessary skills for performing this work and that it is more economical and efficient for the Company to have this work done by them.

¹ In the spring of 1978, the IBEW filed suit in Federal district court to compel the Company and the Machinists to enter tripartite arbitration. The court has reserved ruling pending this proceeding.

The IBEW asserts that the work is properly performed by its members inasmuch as the Employer has assigned the work to the electricians as of October 1, 1978; the electricians construct some of the thermocouples which are installed; and it is an electrical instrument and should be properly installed by electricians. It further asserts that its contract with the Employer covers the work in question and that electricians have in the past performed the disputed work.

Respondent takes the position that the work should be appropriately assigned to production employees represented by it inasmuch as the disputed work is production work which is done by its members and it members have done the great majority of the work in the past. It further asserts that its collective-bargaining agreement and job descriptions favor the award of the work to the production workers; that these employees possess better qualifications to perform the work; and that it would be more efficient for these employees to perform the disputed work.

D. *Applicability of the Statute*

Before the Board may proceed with 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. The evidence here shows that by letter of August 30, 1978, and in a personal conversation on September 18, 1978, Respondent's representatives, in response to the Company's announcement that it was assigning the disputed work to the maintenance electricians, did threaten to strike and picket the Company.

The parties have stipulated that there is no agreed-upon method for the voluntary adjustment of the dispute.

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 occurred 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.

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.² The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and

² *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).

experience reached by balancing those factors involved in a particular case.³

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

1. Collective-bargaining agreements

Both Unions claimed the work on the basis of their respective collective-bargaining agreements. The IBEW relies on language present in its contracts since 1966. Article XIX, section 2(b), of its current contract states in part:

(b) Also included shall be the installation and maintenance of electrical items, equipment and apparatus on dies, jigs, and fixtures”

According to the IBEW, thermocouples are an electrical item, equipment, or apparatus, as electricity is generated through the wires, and bonding jigs are included under the categories of dies, jigs, and fixtures.

On the other hand, the Company and the IAM claim that the IAM's collective-bargaining agreement incorporates job classifications and job descriptions which by reference cover the work in dispute. Thus, they claim that thermocouples are a production tool used in the fabrication and construction of bonding jigs and as such fall under the job description of four different classifications of production employees. Further, the IAM presented evidence that the installation of thermocouples on bonding jigs was discussed at negotiations for the collective-bargaining agreement and it was agreed that this work was covered under the contract. The Company and the IAM further claim that the IBEW's contract does not cover the work in dispute. Rather, specific portions of that contract show that production equipment that is manufactured for sale is not covered under the IBEW contract and, according to them, a bonding jig is such an item. In addition, the IBEW contract states that article XIX, section 2, is not intended to enlarge or diminish the jurisdiction of the work performed by employees represented by the IBEW and, since the production unit had done the majority of the thermocouple installation in the past, article XIX did not entitle the maintenance electricians to the work.

There was also evidence presented that jigs other than bonding jigs do contain electrical equipment, such as common electrical conduit, which the bonding jigs do not contain. It is therefore conceivable that this type of jig is what is intended by the IBEW's contract.

Neither of the contracts specifically relates to the installation of thermocouples on bonding jigs. Al-

though the IBEW contract does mention the installation of electrical equipment on jigs, in our opinion the evidence presented does not call for a conclusion that either collective-bargaining agreement is determinative of the dispute herein.

2. Company and industry practice

The evidence presented by the parties shows that employees represented by both Unions have in the past installed and maintained thermocouples on bonding jigs. It is undisputed that, following an arbitration award in favor of the maintenance electricians in 1977, the Company assigned the work to the electricians for a short while, and that, since October 1978, this assignment has also been with the electricians. The IBEW also prevented evidence that, prior to 1977, its members installed and maintained thermocouples on bonding jigs in the production of aircraft, notably the DC-10.

The Company and the IAM contend that, except for the temporary 1977 and 1978 awards of this work to the electricians, and a small amount of maintenance work on thermocouples on the DC-10, which they contend was erroneously awarded to the electricians contrary to company policy, production employees have installed and maintained the great majority of the thermocouples. The Company presented evidence to show that of the thermocouples it has utilized since the early 1950s well over 90 percent have been installed and maintained by the production employees.

Although the evidence does show that both groups of employees have installed the thermocouples in the past, it is Our opinion that the preponderance of the evidence shows that a great majority of the work has been done by the production employees represented by the IAM.

Relating to industry practice the only evidence presented was the testimony of the director of personnel services for the Company, O'Toole, who testified that, in a survey taken of five or six other aerospace firms, the Company learned that the practices of installing and maintaining thermocouples on bonding jigs was done by the major production unit and not by maintenance electricians.

3. Relative skills

It appears from the record that the installation and maintenance of thermocouples is an uncomplicated task which requires very little skill. Although the IBEW claims that electricians' knowledge of electricity and of the metals used in the wires of the thermocouples favors the award of the work to this group, the evidence does not support a finding that any appreciable knowledge of electricity is required to per-

³ *International Association of Machinists, Lodge No. 1743, AFL-CIO, (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

form the work. On the other hand, the IAM claims that attaching a thermocouple to a bonding jig, whether it be by welding or drilling and tapping, is work that is within the job descriptions of the production employees, and in line with other work they normally do.

It is our opinion that the work does not require the knowledge of electricity possessed by maintenance electricians and requires little skill to perform. This weighs in favor of an award to the production unit which does the remainder of the work on the production of the bonding jig.

4. Economy and efficiency of operation

The Employer and the IAM contend that it is more economical and efficient to have the production employees represented by the IAM install and maintain the thermocouples inasmuch as they are engaged in the total production of the bonding jig, of which the disputed work is but a very small part. Testimony was presented by the Company that having the maintenance electricians install the thermocouples entails transferring the work from one line of supervision to another, causing not only additional paperwork, but also unnecessary delays in the total production time of the bonding jig. This is caused in part by the difference in the physical locale of the two groups of employees.

5. Arbitration awards

As noted, both of the Unions have been awarded the work in question by different arbitrators. However, in light of the fact that neither Union was afforded an opportunity to present evidence at the arbitration hearing resulting from a grievance being filed by the other Union, we find that the awards resulting from those arbitrations are not determinative here.

6. Employer preference

Although at the time of the hearing employees represented by the IBEW had been assigned the work in dispute, the Employer has made clear its preference

that the work be performed by the production employees represented by the IAM.

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 IAM are entitled to perform the work in dispute. We reach this conclusion relying on the facts that the Company prefers that these production employees perform this work because of the greater efficiency and economy enjoyed, and its assignment of this work to them a majority of the time in the past. The record shows that a thermocouple, although made up of wires which conduct a small amount of electricity, is a production tool, and a small part of the whole bonding jig which is produced in the tooling department by production employees. As such, it is work properly assigned to these employees rather than to employees whose principal responsibility is the maintenance of the plant electrical system and equipment. It is evident that the knowledge of electricity possessed by the maintenance electricians is far greater than that necessary to perform the work in dispute. Accordingly, we shall determine the dispute before us by awarding the work in dispute at the Employer's Lambert Field facility in St. Louis County, Missouri, to those production employees represented by the IAM, but not to that Union or its members.

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:

Employees of McDonnell Douglas Corporation, who are represented by Aerospace District Lodge No. 837, International Association of Machinists and Aerospace Workers, AFL-CIO, are entitled to perform the installing and maintenance of thermocouples on bonding jigs which are used in the production of parts for fighter planes and other parts produced at the Employer's Lambert Field facility.