In the Matter of WILLIAM FARGO, BUSINESS AGENT, LOCAL 30, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL, ET AL., *and* NEW LONDON MILLS, INCORPORATED

*Case No. 1-CD-16.—Decided October 17, 1950*

## DECISION AND DETERMINATION OF DISPUTE

### STATEMENT OF THE CASE

This proceeding arises under Section 10 (k) of the Act. On March 27, 1950, New London Mills, Incorporated, herein called the Company, filed with the Regional Director for the First Region a charge, and on April 18, 1950, an amended charge, against William Fargo, business agent, Local 30, United Brotherhood of Carpenters & Joiners of America, AFL, and Local 30, herein called the Carpenters; Frank E. Connor, business agent, Local 15, International Association of Bridge, Structural & Ornamental Iron Workers, AFL, and Local 15, herein called the Iron Workers; Joseph Stanley, business agent, Construction & General Laborers Union, Local 547 of the International Hod Carriers' Building and Common Laborers' Union of America, AFL, and Local 547, herein called the Laborers; Edward Rice, business agent, Local 493, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and Local 493, herein called the Teamsters; William Lyden, business agent, Local 305, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry, AFL, and Local 305, herein called the Plumbers; and New London Building Trades Council, AFL, herein called the Council, alleging that they had engaged in and were engaging in certain activities proscribed by Section 8 (b) (4) (D) of the Act. It was alleged, in substance, that Respondents[1] had induced and encouraged the employees of another employer to engage in a refusal to work for the purpose of forcing or requiring the Company to assign particular work in its plant to those persons who were

[1] The individual Respondents moved to dismiss as to themselves because they had been designated in the pleadings as "business Agents" whereas they allegedly were acting only as "delegates of the Council"; the Locals moved to dismiss as to themselves on the ground the Council was the only acting party; the Council moved to dismiss on the ground that it was not a labor organization. In denying each of these motions it is sufficient to observe that the record does not support any of these contentions.

members of the named labor organizations rather than to the present employees of the Company.

Pursuant to Sections 203.74 and 203.75 of Board Rules and Regulations, the Regional Director investigated the charge and provided for an appropriate hearing, upon due notice to all the parties. In accordance therewith, a hearing was held before James V. Constantine, hearing officer of the Board, on May 4, 1950. All the 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. The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed. All the parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case the Board makes the following:

## FINDINGS OF FACT

### 1. The Company's business

New London Mills, Incorporated, is a New York corporation organized in 1948 for the purpose of engaging in the manufacture and distribution of hard-surface floor coverings. In preparation for its manufacturing operations, the Company purchased an existing plant in New London, Connecticut, and began to remodel the plant to provide the necessary manufacturing facilities. It is in connection with this remodeling operation that the present dispute has arisen.

Although the Company has not as yet engaged in actual production, its operations thus far have occasioned the inflow into Connecticut of over $140,000 worth of material. Of this amount, $114,000 worth represented materials or equipment of a capital nature to be used for the production of goods for commerce, and $26,000 worth of manufacturing supplies. According to the Employer's uncontradicted statement, it intends to manufacture at this plant products valued at over $100,000, a substantial portion of which product is to be shipped to points outside the State.[2] It appears that the Company's out-of-State sales will exceed the minimum requirement for the exercise of jurisdiction recently adopted by the Board.[3] Under these circumstances, we find that the Company's operations affect commerce within the meaning of the Act and that the policies of the Act will be effectuated by exercising jurisdiction in this case.

[2] Contrary to the Respondent we regard this evidence as relevant to the issue of whether it would effectuate the policies of the Act to assert jurisdiction. The reasonableness of the Employer's estimate is indicative by the substantial investment made in plant facilities.

[3] See *Stanislaus Implement & Hardware Company, Ltd.*, 91 NLRB 618.

2. The dispute

a. *The facts*

The remodeling operation, previously referred to, has been and is being carried out by the Company, partially on the basis of separate contracts with independent contractors to furnish and install specified building materials, and partially by the Company using its own employees. In March 1950, King, a general contractor using union employees, was engaged upon contracts to furnish certain remodeling work and certain ironwork. Upon the completion of King's contract with respect to the ironwork, King's ironworkers were laid off. Thereafter, the Company utilized its own employees together with certain technicians furnished by the European vendor of certain imported manufacturing machinery to install this particular machinery which involved certain ironwork. On March 17, 1950, pickets appeared at the plant, carrying banners stating "work being done unfair to New London Building Trades Council, AFL." As a result of the picketing, King's employees refused to work on the Company's project. Included among the craftsmen who stayed off the job were carpenters and brickmasons as well as common laborers who had previously been working. The picketing and resultant work stoppage have continued and were still current at the time of the hearing.

Since the picketing began, two meetings have been held between the parties. The first occurred on March 17 between representatives of the Company, King, and Respondent Fargo of the Council. Langner, the Company's representative and the manager of its New London plant, requested Fargo to have the pickets removed to enable the remodeling to continue. Fargo replied, in effect, that the ironworkers considered themselves locked out inasmuch as they had all been laid off at a time when ironwork was being continued at the plant. Fargo also informed Langner that the picketing had been directed by the Building Trades Council and that there was nothing he, individually, could do to have the picket removed. On March 21, 1950, the second meeting was held at the instigation of the Connecticut State Mediation Board, attended by the Respondents, the Company, King, and the State Mediation Board. During this meeting, representatives of the Respondents advised Langner, in effect, that if he wished to have union members work on his project, he would have to correct "the mixed conditions," namely, the presence of nonmember workers on the same job with members of the Respondent Unions. Connor, of the Iron Workers, insisted that the Iron Workers' members had been locked out and that he did not permit his men to

work where nonunion men were doing the same work. Langner replied that it was necessary for the Company to continue to install the European equipment with its own personnel. Connor stated that it would be possible for the Company to hire ironworkers directly. Langner offered to agree that any remaining contracts for remodeling would be let to union contractors but insisted that the Company's employees would continue to do some of the work. Rice of the Teamsters suggested that the Respondents "segregate" the work at the plant so that the Company's employees would not be working with union men. Langner, however, declined to agree, and the meeting concluded with no progress.

b. *Contentions of the parties*

The Company contends that the Respondents by their conduct in attempting to induce it to replace its own employees on the installation of the European equipment with members of the Iron Workers and by placing a picket line at the project in furtherance of such objective, have violated provisions of Section 8 (b) (4) (D).

Respondents contend that Section 10 (k) does not apply to the present situation because: (1) Section 10 (k) is limited to jurisdictional disputes involving rival unions; (2) that the word "class" in Section 8 (b) (4) (D), with which Section 10 (k) is coterminous, is not synonymous with "group" but rather with "classification" and that as such the record does not depict a situation within the ambit of the Act; and (3) that, in any event, if Section 8 (b) (4) (D) is construed to prohibit the type of activity present in this case, the section is unconstitutional.[4]

c. *Applicability of the statute*

On the record before us, it is clear that the dispute in this proceeding involves the joint effort by the Respondent labor organizations to force or require the Company to assign machinery installation work to members of the Iron Workers, although the work was being performed by the Company's employees who were not represented by any union. The only distinction between this case and the *Stroh* case,[5] recently decided, appears to be that in the present case the employees whom the Respondents sought to displace with their own members are not organized, whereas in the *Stroh* case, the employees sought to be displaced were represented by the International Association of Machinists. However this distinction does not affect the applicability of

[4] This issue was not herein considered. See *Rite-Form Corset Company, Inc.*, 75 NLRB 174.

[5] 88 NLRB 844.

Section 8 (b) (4) (D) as finally enacted. If any ambiguity exists in the words "trade, craft or class" which were added to the original version of the Senate bill, S 1126, such ambiguity is completely removed for us by Senator Taft's explanation of the section prior to the present Act's passage to the effect that "this subsection applies not only to strikes over the assignment of work to one particular union rather than another, but also to the assignment of work to one union rather than *another group of employees.*" [6] [Emphasis added.]

d. *The merits of the dispute*

Thus it appears that neither the Iron Workers, nor the other Respondents, nor King, the employer of the Iron Workers' members, has any immediate or derivative rights under existing contracts executed by the Company to the work, the assignment of which precipitated this dispute. Nor does it appear that these Respondents have any rights in any outstanding Board certification or order,[7] affecting this work.

Under the foregoing circumstances, the Board may not be concerned with the appropriateness of the Company's assignment of the disputed work. The Board has specifically held that Sections 8 (b) (4) (D) and 10 (k) do not deprive the employer of the right to assign work to his own employees, and that these sections were not intended to interfere with an employer's freedom to hire, subject only to the requirement against discrimination as contained in Section 8 (a) (3).[8] Consequently, in determining this dispute, it is sufficient on the facts before us that the Company engaged employees to install the manufacturing machinery and that the Respondents acted to force or require the Company to assign this work to their own members.

The Respondents contend, in effect, that in any event the dispute in this proceeding is settled or otherwise moot. However, the record shows that as of the time of the hearing approximately 2 months' work remained to be done at the Company's project and that the project continued to be picketed by the Respondents. Under these circum-

[6] 93 Cong. Rec. 7002, June 12, 1947.

Mr. Houston notes that the position of his colleagues of the minority is consistent with his dissent in the *Moore Drydock* case, 81 NLRB 1108. However, the majority in that case rejected his view that Sections 10 (k) and 8 (b) (4) (D) are not coterminous and held that the Board *must* invoke 10 (k) "whenever it is charged" that a union has violated Section 8 (b) (4) (D). Accordingly, as he believes that the instant charge alleges conduct encompassed by Section 8 (b) (4) (D), and as he feels bound by the decision of the majority in the *Moore Drydock* case and by subsequent decisions, which are comprehensive enough to include the situation in which only one union is engaged in the dispute, Mr. Houston joins with Chairman Herzog and Member Reynolds in the determination of this dispute.

[7] Section 8 (b) (4) (D) contains a proviso as follows: ". . . unless such employer is failing to conform to any order or certification of the Board determining the bargaining representative for employees performing such work. . . ."

[8] *Juneau Spruce Corporation,* 82 NLRB 650; *United Brotherhood of Carpenters and Joiners of America, et al. (Stroh Brewery Company),* 88 NLRB 844.

stances, apart from other considerations, we find no merit in this contention of the Respondents.

Accordingly, we find that neither the Council nor the other named Respondents is lawfully entitled to force or require New London Mills, Incorporated, to assign the work in dispute to members of the Respondent Unions rather than employees of New London Mills, Incorporated.

## DETERMINATION OF DISPUTE

On the basis of the foregoing findings of fact and the entire record in this case, the Board makes the following Determination of Dispute, pursuant to Section 10 (k) of the amended Act:

1. William Fargo, business agent, Local 30, United Brotherhood of Carpenters & Joiners of America, AFL, and Local 30, and Frank E. Connor, business agent, Local 15, International Association of Bridge Structural & Ornamental Iron Workers, AFL, and Local 15, and Joseph Stanley, business agent, Construction & General Laborers Union, Local 547 of the International Hod Carriers' Building and Common Laborers' Union of America, AFL, and Local 547, and Edward Rice, business agent, Local 493, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and Local 493, and William Lyden, business agent, Local 305, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry, AFL, and Local 305, and New London Building Trades Council, AFL, are not, and have not been lawfully entitled to force or require New London Mills, Incorporated, to assign work on the installation of machinery at that Company's new plant in New London, Connecticut, to members of the aforesaid Unions rather than to employees of the Company.

2. Within (10) ten days from the date of this Decision and Determination of Dispute, each of the Respondents may notify the Regional Director for the First Region in writing, as to what steps the Respondents have taken to comply with the terms of this Decision and Determination of Dispute.

MEMBERS MURDOCK and STYLES, dissenting:

In determining the dispute in the *Stroh Brewery Company* case, the Board held that it was sufficient that the employer engaged employees to perform the work and that the respondent unions acted to force the employer to assign the work to their own members. Accepting the validity of that decision, as well as that of the majority's views in *Moore Drydock Company*, 81 NLRB 1108, and *Juneau Spruce Corporation*, 82 NLRB 650,[9] we nevertheless do not believe that any of

[9] Member Murdock dissented in both cases. Member Styles did not participate.

these decisions necessarily control in the present case, because of the very distinction pointed out by the majority. In this case, unlike *Stroh*, or any other proceeding in which the Board has undertaken to determine a jurisdictional dispute under Section 10 (k) of the amended Act, there is only one union (that is, the associated Respondents) engaged in the dispute. No union is claiming the work for the employees to whom the Company has assigned it; the only controversy here is between the Company and the Respondents over the issue of preferential hiring. We believe that the absence of at least two opposed labor organizations makes it utterly impossible to treat this dispute as if it were a "jurisdictional" dispute of the kind that the Board is supposed to settle under Section 10 (k) of the Act.