

will be discharged by its payment to employees named below, and to the estate of Edward Heineman, and/or to the profit-sharing plan account of employees indicated, the amount set opposite their names, less the tax withholding required by Federal and State laws.

	Net backpay	Amount due to profit-sharing account as of 11/1/61	Liquidated amount due from profit-sharing account
Dwight Andrews.....	\$6,953	\$1,432 92	
Gary Lee Bell.....	4 903		
Lowell Irvin Bell.....	3,707		\$202 93
Ronald Charles Bell.....	2,705		167 70
Jessie Randall Berry.....	5,794	1,239 57	
Burl Coffee.....	3,247		389 40
Robert Dailey.....	5,232		162 85
Edwin Gale.....	2,983		179 50
James J Gentry.....	1,880		
Est of Edw. Heineman.....	1 932		
Russell Hickson.....	3,731		198 10
Lloyd Huddlestun.....	4,427		
Alpheus Jordan.....	8 684	1,252 24	
Volie H Maggard.....	3,886		140 28
Charles T Martin.....	6,226	2,967 26	
John Ott.....	3,447	469 87	
Cathie Parker.....	10,517	1,034 81	
Bozo Petrovich.....	3,318		
Bernard Scribner.....	13,986	1,460 17	
Roger Shoaf.....	958		
Warren Thomas.....	3,998		
Daniel Wells.....	11 001	2,662 43	
Total.....	113,515	12,519 27	1,441 16

Local 45, International Association of Bridge, Structural and Ornamental Iron Workers and Machinery Movers, AFL-CIO and Kaiser-Nelson Steel & Salvage Corporation. Case No. 22-CD-79. April 11, 1963

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the Act following a charge filed by Kaiser-Nelson Steel & Salvage Corporation, herein called Kaiser, against Local 45, International Association of Bridge, Structural and Ornamental Iron Workers and Machinery Movers, AFL-CIO, herein called Ironworkers, alleging that Ironworkers illegally coerced Kaiser to change work assignments from one class of employees to another. A duly scheduled hearing was held before Charles Sandberg, hearing officer, on various dates from November 7 through November 14, 1962. Kaiser, Ironworkers, and Local 734, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, herein called Hod Carriers, appeared at the hearing and were afforded full opportunity to be heard, to examine and

cross-examine witnesses, and to adduce evidence bearing upon the issues. The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed.¹

Pursuant to Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

Upon the entire record, the Board makes the following findings:

1. The parties stipulated and we find that Kaiser is engaged in commerce within the meaning of the Act.
2. The parties also stipulated and we find that Ironworkers and Hod Carriers are labor organizations within the meaning of Section 2(5) of the Act.
3. The dispute.

A. The basic facts

Kaiser is an Ohio corporation, engaged in the demolition of buildings, refineries, tanks, and other structures in various States and in furnishing scrap iron to the steel industry. In 1962 it contracted with the New York Central Railroad to dismantle a grain elevator owned by the railroad on pier 7, in West New York, New Jersey. In July 1962 Kaiser executed a collective-bargaining agreement with Hod Carriers, recognizing that union as the exclusive representative of all its production and maintenance employees at its New Jersey operations.² Pursuant to this agreement, Kaiser thereafter assigned the work of dismantling the grain elevator to members of Hod Carriers.

On August 8, 1962, after the demolition work on the grain elevator had begun, Daniel Trainor, business agent of Ironworkers, visited the site and spoke to Kaiser's job superintendent, Robert New. Trainor claimed that Ironworkers were entitled to the demolition work, demanded that it be assigned to members of Ironworkers, and announced that if this were not done, the jobsite would be picketed.³ New advised Trainor that Kaiser was already under contract with Hod Carriers and suggested that he discuss the matter with officials of that union.

The record shows that from approximately October 19 to November 1, 1962, Ironworkers, including Trainor himself, picketed the jobsite. On several occasions, trucks destined for the Kaiser operation

¹ The hearing officer sustained objections by Kaiser to Ironworkers' attempts to question witnesses concerning the circumstances surrounding the negotiation of a collective-bargaining agreement between Kaiser and Hod Carriers. Such questions were apparently designed to show that the contract was unlawfully entered into. However, as this is an issue which the Board will not determine in this type of proceeding, we affirm the hearing officer's ruling.

² The job classifications covered by this agreement were yardman, low burner, high burner, and operator.

³ There is conflicting evidence in the record as to whether Ironworkers originally claimed all or only a portion of the demolition work on the jobsite. At the hearing, Ironworkers stated that its claims extended only to "The cutting and lowering of the steel—where power was going to be used."

turned back at the picket line. Picketing ceased as a result of a stipulation entered into by Ironworkers and the General Counsel during the course of a District Court suit for an injunction under Section 10(1) of the Act.

Neither union has been certified as bargaining representative of employees performing the disputed work.

B. Contentions of the parties

Kaiser contends that its assignment of the disputed work to employees represented by Hod Carriers is proper on the following grounds: (1) It has always assigned such work in the past to members of sister locals of Hod Carriers; (2) this practice has also been followed by other employers in the industry; (3) it has been the practice of employers in the area to assign such work to members of Hod Carriers; (4) employees represented by Hod Carriers have the necessary skills to perform the disputed work; (5) Kaiser's agreement with Hod Carriers requires such assignment; (6) Hod Carriers has jurisdiction over the work in dispute; and (7) safe and efficient operation of Kaiser's business justifies the assignment.

Hod Carriers indicated its agreement with these arguments presented by Kaiser.

Ironworkers urges the award of the disputed work to its members on the following grounds: (1) Its jurisdiction includes such work; (2) the area practice is to assign such work to members of Ironworkers; (3) it is the industry practice to assign members of Ironworkers to perform the disputed work; (4) arbitration awards have given such work to members of Ironworkers in the past;⁴ and (5) members of Ironworkers have, and members of Hod Carriers do not have, the necessary skills to perform the work.

C. Applicability of the statute

Section 10(k) of the Act empowers the Board to hear and determine the dispute out of which a Section 8(b) (4) (D) charge has arisen. Before making a determination of the dispute, however, the Board is required to find there is reasonable cause to believe that Section 8(b) (4) (D) has been violated.

The record herein shows that Kaiser assigned the disputed work to members of Hod Carriers, that Ironworkers claimed its members were entitled to the work, and that Ironworkers thereafter threatened to picket and picketed the jobsite from October 19 to November 1, 1962. The record establishes that the threats to picket and the picket-

⁴ We do not give any weight to the arbitration proceedings cited by Ironworkers on its behalf because Hod Carriers was not a party to those proceedings, nor to the arbitration proceedings cited by Hod Carriers on its behalf because no affirmative award resulted from such proceedings

ing constituted threats, coercion, or restraint with an object of forcing or requiring Kaiser to change work assignments. In fact, some stoppage of deliveries did occur as a result of the picketing. We find, therefore, on the entire record, that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, and that the dispute is properly before the Board for determination under Section 10(k) of the Act.⁵

D. *Merits of the dispute*

Each party maintains that application of the relevant factors which we customarily consider in jurisdictional dispute cases⁶ favors its position as to which group of employees is entitled to the work. We shall discuss those factors *seriatim*:

(1) *Skills and work involved*: The record shows that the employees assigned by Kaiser to perform the disputed work have served an apprenticeship with various employers to learn the skills required in demolition work and that they average approximately 12 years of experience in doing such work. It is clear, then, that by training and experience the Kaiser employees who are members of Hod Carriers possess the skills necessary to perform the disputed work. There is no dispute that members of Ironworkers also possess the necessary skills to do the disputed work and that they frequently perform similar work on other demolition projects.

(2) *Industry and area practice*: Kaiser and Hod Carriers introduced evidence to show that other employers in this industry assigned the disputed work to members of the Hod Carriers and its sister locals, both in New Jersey and in other States. Ironworkers, on the other hand, presented evidence that employers in New Jersey and elsewhere frequently assigned such work to members of Ironworkers locals. This evidence indicates, and we find, that it is the practice of employers in this industry in New Jersey and other States to use members of either union for the disputed work, thus establishing no controlling industry or area practice in this regard.

(3) *Union constitutions*: Both unions introduced their international constitutions into evidence, together with other documents to support their claims to the disputed work. We find that both the Hod Carriers and Ironworkers Internationals claim jurisdiction over such work. We are unable therefore to give determinative weight to this factor.

⁵ We find that the parties have not adjusted or agreed on a voluntary method of adjustment of their dispute within the meaning of Section 10(k). Kaiser was neither a party to any of the arbitration proceedings relied on by Ironworkers, nor did Kaiser agree to be bound by them. *United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local 1622 (O R Karst)*, 139 NLRB 591.

⁶ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J A Jones Construction Company)*, 135 NLRB 1402

(4) *Employer's past practice*: The evidence in the record concerning Kaiser's past practice in dealing with work of the type involved herein shows that on 32 occasions since 1957, in 8 different States, Kaiser assigned such work to members of sister locals of the Hod Carriers. No instance appears in the record in which members of Ironworkers or its sister locals were used by Kaiser for this type of work.

(5) *Collective-bargaining agreement*: In 1962 Kaiser and Hod Carriers entered into an agreement under which Kaiser recognized Hod Carriers as the exclusive bargaining representative of all its production and maintenance employees at its New Jersey operations. There is no contract and no history of collective bargaining between Kaiser and Ironworkers.

(6) *Safety and efficiency*: Kaiser introduced into evidence letters from various companies for which it had performed demolition work and from a municipal fire department commending it on the steps it had taken to assure safe operations. Members of Hod Carriers were used on all the projects involved. In addition, we note that members of Hod Carriers are already present on the pier 7 site to perform work which is not in dispute, while members of Ironworkers would have to be brought to the site for the express purpose of performing the disputed work.

Weighing the factors relied upon by Kaiser and Hod Carriers, on the one hand, against those cited by Ironworkers on the other, we conclude that the former outweigh the latter. As the employees employed by Kaiser are sufficiently skilled to perform the disputed work, as Kaiser assigned such work to them, as Kaiser has established a practice of using such employees to perform similar work in the past, as the collective-bargaining agreement between Kaiser and Hod Carriers requires such assignment, and as the assignment is consistent with practice in the industry, area practice, and the safe and efficient operation of Kaiser's business, we shall determine the dispute in favor of those employees who are already performing the work. In making this determination, we are assigning the controverted work to employees represented by Hod Carriers, and not to Hod Carriers or its members.

In view of the above, we find that, in regard to the project of dismantling a grain elevator belonging to the New York Central Railroad at pier 7, West New York, New Jersey, Ironworkers was not and is not entitled, by means proscribed in Section 8(b)(4)(D), to force or require Kaiser to assign to its members, rather than to the employees already assigned to perform such work, the work of cutting and lowering steel where power is required.

DETERMINATION OF DISPUTE

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

1. Employees of Kaiser-Nelson Steel & Salvage Corporation engaged on the project of dismantling a grain elevator belonging to the New York Central Railroad at pier 7, West New York, New Jersey, in the work of cutting and lowering of steel where power is required and currently represented by Local 734, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, are entitled to perform such work.

2. Local 45, International Association of Bridge, Structural and Ornamental Iron Workers and Machinery Movers, AFL-CIO, is not and has not been lawfully entitled to force or require Kaiser-Nelson Steel & Salvage Corporation to assign such work to its members.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 45, International Association of Bridge, Structural and Ornamental Iron Workers and Machinery Movers, AFL-CIO, shall notify the Regional Director for the Twenty-second Region, in writing, whether or not it will refrain from forcing or requiring Kaiser-Nelson Steel & Salvage Corporation, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to its members rather than to the employees of Kaiser-Nelson Steel & Salvage Corporation who are represented by Local 734, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO.

Pathe Laboratories, Inc. and Motion Picture Laboratory Technicians, Local 702, International Alliance of Theatrical and Moving Picture Machine Operators of the United States and Canada, AFL-CIO. *Case No. 2-CA-8652. April 12, 1963*

DECISION AND ORDER

On January 30, 1963, Trial Examiner Eugene F. Frey issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Intermediate Report. Thereafter the General Counsel and Charging Party filed exceptions to the Intermediate Report and supporting briefs.¹ The Respondent filed a brief in reply to the exceptions and brief of the General Counsel.

¹ The Charging Party has requested oral argument. The request is hereby denied because the record, the exceptions, and briefs adequately present the issues and positions of the parties.