

CONCLUSIONS OF LAW

1. Respondent, Solo Cup Company, is an employer engaged in commerce within the meaning of the Act.

2. The International Brotherhood of Teamsters and the United Papermakers and Paperworkers, AFL-CIO, are labor organizations within the meaning of the Act.

3. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

RECOMMENDATION

It is recommended that the complaint be dismissed in its entirety.

Warehousemen's Union Local 6, International Longshoremen's & Warehousemen's Union and Puget Sound Tug & Barge Company; Shipowners & Merchants Towboat Co., Ltd.; and Bay Cities Transportation Company. *Case No. 20-CD-92.*
November 12, 1963

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the Act following charges filed by Puget Sound Tug & Barge Company, herein called Puget Sound, alleging that Warehousemen's Union Local 6, International Longshoremen's & Warehousemen's Union, herein called Respondent or Local 6, had induced and encouraged employees to strike for the purpose of forcing or requiring Puget Sound, Shipowners & Merchants Towboat Co., Ltd., herein called Shipowners, and Bay Cities Transportation Company, herein called Bay Cities, to assign particular work to members of Respondent rather than to members of the Inlandboatmen's Union of the Pacific, affiliated with the Seafarers' International Union of North America, herein called the IBU. Pursuant to notice, a hearing was held before William F. Roche, Hearing Officer, on March 25, April 29, and May 16, 1963, at which all parties appeared 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. Thereafter, Respondent, IBU, and Puget Sound, *et al.*, filed briefs which have been duly considered.

Upon the entire record in this case, the Board¹ makes the following findings:

1. The business of the Employers

Puget Sound, a Washington corporation with its principal office in Seattle and an office in San Francisco, is engaged in the business,

¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Jenkins].

inter alia, of operating barges which carry interstate commerce under tariffs approved by the Federal Maritime Commission. In each of the years 1961 and 1962, Puget Sound's gross income exceeded \$500,000 and the value of the cargo carried on its barges exceeded \$50,000.

Shipowners, a California corporation with its principal office in San Francisco, is engaged in general towing in both offshore and inland waters and tows vessels which are engaged in interstate commerce. In 1961 and 1962, Shipowners' gross income exceeded \$500,000 per year and in each of these years it towed vessels carrying cargo valued in excess of \$500,000.

Bay Cities, a California corporation with its principal office in San Francisco and an office in Oakland, is primarily engaged in maritime towing. Its gross income in 1961 and 1962 exceeded \$500,000 and the value of the cargo transported exceeded \$500,000 per year.

Oakland Dock & Warehouse Co., herein called Oakland Dock, operates a marine terminal at Oakland, California, providing facilities for berthing vessels and loading, unloading, and warehousing cargo. It annually receives in excess of \$50,000 for such services performed in connection with cargo carried in interstate commerce and for various firms engaged in interstate commerce.

We find that Puget Sound, Shipowners, Bay Cities, and Oakland Dock are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this proceeding.

2. The labor organizations involved

Respondent and IBU are labor organizations within the meaning of Section 2(5) of the Act.

3. The dispute

The Work at Issue

The work involved in this dispute consists of the handling of the mooring lines on the pier for tying up, letting go, and shifting of seagoing barges. The handling of mooring lines on board the barges is performed by tugboat crew members who are represented by IBU, and is not claimed by the Respondent.

The Basic Facts

Puget Sound has engaged in transporting cargo between the San Francisco area and Alaska in seagoing barges since about March 1960. These barges are towed from Seattle to San Francisco by either Puget

Sound's oceangoing tugs or Shipowners' offshore tugs, and are shifted between the various marine terminals in the San Francisco Bay area by Bay Cities' harbor tugs. Puget Sound, Shipowners, and Bay Cities are affiliated corporations.

IBU represents the unlicensed crew members employed on the tugs operated by Puget Sound, Shipowners, and Bay Cities, and has collective-bargaining contracts with each of the three companies covering such employees. From the inception of this type of operation, Puget Sound has assigned the work of handling lines of its seagoing barges to the IBU deck hands on the towing tug, including handling lines upon arrival, when shifting berths, and upon departure. Accordingly, when Puget Sound engaged Shipowners and Bay Cities to tow its seagoing barges, all of the work of handling lines in connection with these barges at Oakland Dock's terminal and other marine terminals in the area was performed by the IBU deckhands of the towing tug's crews.

On July 2, 1962, at a time when a representative from Oakland Dock was present, Respondent demanded that Puget Sound use Local 6 members to handle mooring lines on the pier for seagoing barges berthing in the East Bay area. Puget Sound did not agree and, when on or about July 14 Puget Sound's seagoing barge *Fairbanks* arrived in San Francisco Bay under tow by Shipowners' tug *Sea Wolf* and was berthed at the Oakland Dock terminal, the tug's crew members handled the mooring lines. On or about July 17, when it was planned to move *Fairbanks* to the Army base terminal, Respondent demanded that Puget Sound assign to Local 6 members the work of handling the mooring lines on the pier. Puget Sound refused, and Respondent placed a picket line at the head of the pier where *Fairbanks* was moored. Later in the day the picket line was moved outside the terminal to a gate leading to this pier, where picketing continued the following day. Trucks hauling cargo destined for *Fairbanks* and employees scheduled to load and unload cargo refused to cross the picket line.

On July 19, at a meeting with Oakland Dock and Puget Sound, Respondent agreed to discontinue its picket line and permit *Fairbanks* to off-load and take on new cargo. At this time Respondent stated that its "beef" was not with Puget Sound, but was with Oakland Dock. However, on July 23 Respondent told Puget Sound that it could not bring seagoing barges into the Oakland Dock terminal unless it agreed to use Local 6 line handlers on the pier. Thereafter, and at least until an injunction issued in a 10(1) proceeding in the United States district court, Puget Sound barges were not brought to the San Francisco area.

Applicability of the Statute

Before the Board may proceed to a determination of a dispute, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. The Respondent contends that no such finding can be made here. It concedes that it picketed at the Oakland Dock terminal, but argues that the picketing was directed against Oakland Dock for a protected objective, i.e., to compel Oakland Dock to assign the work of handling mooring lines of seagoing barges to Respondent's members as agreed to between Respondent and the East Bay Marine Terminals Association, herein called EBMTA, as more fully discussed *infra*. The evidence establishes that the pickets solicited and appealed to employees to cease performing work in connection with the operations of *Fairbanks*. As a result of these picketing activities, truckdrivers for Bay Cities and other carriers refused to deliver cargo to the barge. Longshoremen and crane operators employed by Marine Terminals and by Oakland Dock and its wholly owned subsidiary, Bulk Terminals, Inc., and the ships' clerk employed by Puget Sound and Bay Cities refused to load or work on cargo for the barge. Thus, the record clearly demonstrates that Respondent induced or encouraged employees at the Oakland Dock terminal to engage in work stoppages, and that the employees did engage in such stoppages. In our opinion, an object of the Respondent's foregoing conduct was to force Puget Sound to assign the disputed work to Local 6 warehousemen, rather than to IBU deckhands.

On the basis of the entire record, we find 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.

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 relevant factors.² The following factors are asserted in support of the claims of the parties herein:

1. *Collective-bargaining agreements.* Respondent relies on its contract with EBMTA and a May 3 meeting between Respondent and EBMTA amending this contract to support its claim to the disputed work, while IBU contends that custom and practice as well as its contracts with the towboat operators herein clearly establish its right to this work.

Directing our attention to Respondent's contract contentions, it appears that Respondent and EBMTA are parties to a contract which

² *International Association of Machinists, Lodge No. 1748 (J. A. Jones Construction Company)*, 135 NLRB 1402.

provides, *inter alia*, the minimum requirements for handling ships' mooring lines. Bulk Terminals adopted this contract in September 1961 by a memorandum of agreement which specified that the work covered included "the work involved in handling of all ships' lines and shall be applicable to the operations of the Employer at the facilities of the Oakland Dock and Warehouse Company." Oakland Dock, which acquired Bulk Terminals as a wholly owned subsidiary on or about March 1, 1962, has not independently entered this or any other agreement with Respondent, but has apparently abided by the terms of the EBMTA agreement.

On or about May 3, 1962, at a meeting of the special labor relations committee comprised of representatives from the Respondent and EBMTA, the Respondent claimed the work of handling mooring lines on the pier for seagoing barges. The EBMTA agreed but proposed that fewer line handlers be used for barges than are customarily used for handling ships' mooring lines. Respondent agreed to a reduction in the number of men for the next two barges, provided that no precedent would be established. At the district court 10(1) proceeding in the instant case Respondent testified that it meant by this that if this arrangement was "all right, it would continue." Neither Oakland Dock nor Bulk Terminal was informed of the May 3 agreement until the July 19 meeting between the Respondent Oakland Dock and Puget Sound when Respondent showed Warren H. Brackett, general manager of Oakland Dock and president of Bulk Terminals, a copy of the minutes of the May 3 meeting. The IBU relies upon (1) its contract with Shipowners which sets forth special provisions for crew members called out to handle lines when they are off watch; and (2) its contract with Bay Cities which describes deckhand duties, in part, as "tying up and letting go as required by the operation"

Upon examination and analysis of the contracts in evidence herein we conclude that both contracts are subject to the interpretation advanced by their proponents and are in direct conflict with regard to the assignment of the work in question. Under these circumstances neither contract is persuasive and cannot constitute the basis for an award of the disputed work.

The IBU and the towboat operators further contend that the agreements between Respondent and EBMTA apply only when line-handling services are requested by the vessel³ and such services were not requested by *Fairbanks*. We find merit in this contention as we find that these agreements cannot supersede the published tariff No. 1.

2. *Efficiency of operation.* There is no serious dispute in the record about the ability of the IBU deckhands or the Local 6 warehousemen

³ Oakland Dock's Tariff No. 1, filed with the Federal Maritime Commission, specified that line-handling services will be provided at the terminal "upon request of the vessel or carrier"

to perform the line-handling work in dispute herein. Puget Sound's seagoing barges, such as *Fairbanks* herein, are moored by light waterproof lines which lead from cleats on the barge to cleats, bollards, or bitts on the pier. Normally three or four lines are used—a headline from the bow, one or two springlines from the middle, and a stern-line. Unlike the larger and heavier manila lines used in mooring ships, barge lines are handled by hand, without the use of powered winches.

A barge, seagoing or harbor, is moored by being maneuvered alongside and held in place against the pier by one or more tugs while the deckhands step from the barge to the pier carrying the end of the mooring line. Each line has an eye, or loop, on its end which is dropped over a cleat, bollard, or bitt on the pier. The deckhand then steps back aboard the barge, takes the slack out of the mooring line, and fastens it to a cleat on the barge. This operation is repeated for each line, and the entire job can be performed by one deckhand. In undocking, it is held fast against the pier by one or more tugs. The deckhand unfastens the line on the barge to allow slack, steps off onto the pier, and removes the loop from the cleat. He then returns on board the barge, hauls in the line, and secures it. The entire operation of mooring or unmooring a seagoing barge usually takes from 5 to 10 minutes. Testimony in the record indicates that due to various factors such as tide, winds, weather, etc., the arrival time of a seagoing barge is not susceptible to accurate advance determination. Because of this, and the fact that shore-based line-handling parties must be at the pier waiting for the arrival of the vessel, assignment of the disputed work to Local 6 warehousemen would result in line handlers being stationed and waiting for inordinately long periods of time. It is clear, therefore, that use of shoreside handlers results in a less efficient operation.

Under these circumstances, we conclude that the assignment of the disputed work to the IBU deckhands is therefore consistent with efficiency of operation in the handling of seagoing barges' mooring lines on the pier.

3. *Company and industry practice.* The record shows that the practice of the towboat operators herein, and of all other towboat operators in the San Francisco area, as well as in other ports of the Northwest and Pacific Coast, has been for tugboat deckhands to handle the mooring lines of seagoing barges docking or undocking. We find no merit to Respondent's contention that the seagoing barges, because of their size, are more closely akin to ships and therefore ship practices concerning line handlers should apply.⁴ Indeed, the record

⁴ The Respondent claimed the work in dispute "because of its fear that the new and expanded use of 'sea-going' barges would cut into the line-handling work performed by its members"

shows that handling the mooring lines for seagoing barges is virtually the same as those of harbor barges. Accordingly, we find that the assignment of the disputed work to the tugboat crew members conforms to past practices in the industry.

Conclusions as to the Merits of the Dispute

Having considered the relevant factors, and upon the record as a whole, we believe that the IBU deckhands rather than the ILWU warehousemen are entitled to the work in dispute between these two groups. In reaching this conclusion, we rely upon company and industry practice, the collective-bargaining agreements adduced in evidence herein, assignment by the employer, and efficiency of operations. We reject the contention that the agreement between the Respondent and the EBMTA, which was entered into by Bulk Terminals, assigns the work in dispute to warehousemen. That agreement must be viewed in the context of Oakland Dock's published Tariff No. 1 and cannot supersede it.

We conclude, therefore, on the basis of the foregoing evidence and the entire record herein, that deckhand members of the tugboat crews, represented by the IBU, should be assigned the disputed work. Accordingly, we shall determine the existing jurisdictional dispute by deciding that deckhand members of the tugboat crews, represented by the IBU, rather than warehousemen, who are represented by the Respondent, are entitled to the work in question. In making this determination, we are assigning the disputed work to deckhands represented by the IBU, but not to the IBU or its members. Our present determination is limited to the particular controversy which gave rise to this proceeding.

Determination of Dispute

Upon the basis of the foregoing findings, and upon the entire record in the case, the Board makes the following determination of dispute pursuant to Section 10(k) of the Act:

1. Deckhand members of tugboat crews employed by Puget Sound, Shipowners, or Bay Cities, who are represented by the Inlandboatmen's Union of the Pacific, are entitled to perform the work of handling mooring lines in connection with tying up, shifting, and letting go Puget Sound's seagoing barges at Oakland Dock's terminal in the East Bay area.

2. Warehousemen's Local 6, International Longshoremen's & Warehousemen's Union, is not and has not been, lawfully entitled to force or require Puget Sound, Bay Cities, or Shipowners to assign the disputed work to warehousemen.

3. Within 10 days from the date of this Decision and Determination of Dispute, Warehousemen's Local 6, International Longshoremen's

& Warehousemen's Union, shall notify the Regional Director for the Twentieth Region, in writing, whether or not it will refrain from forcing or requiring Puget Sound, Bay Cities, or Shipowners, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to warehousemen who are its members, rather than to tugboat deckhands who are represented by the Inlandboatmen's Union of the Pacific.

Bagdad Copper Company and Construction, Building Material & Miscellaneous Drivers Union, Local #83, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Petitioner. *Case No. 28-RC-1115. November 12, 1963*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before J. W. Cherry, Jr., Hearing Officer. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of 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 Fanning and Brown].

Upon the entire record in this case, including the briefs filed by both the Petitioner and the Employer, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. Construction, Building Material & Miscellaneous Drivers Union, Local #83, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers (hereinafter referred to as the Petitioner), requests that the Board find appropriate a unit of all pit department employees at the copper mining and milling operations of Bagdad Copper Company (hereinafter referred to as the Employer), excluding all clerical, managerial, and professional employees, and all guards and supervisors as defined by the Act. The Employer opposes the petition, contending that the only appropriate unit consists of all employees.

The Employer operates an open-pit copper mine and concentrating mill at Bagdad, Arizona. These operations and the contiguous town-