

job. In these circumstances, even if the dispute extends to the additional work claimed by Respondent, we find that the factors of efficiency and economy of operations still favor the lathers. Considering, in addition, the other factors favoring the lathers adverted to in our original determination, we believe that that determination should be, and it hereby is, affirmed.

United Brotherhood of Carpenters and Joiners of America, Local No. 515, AFL-CIO, et al. and J. O. Veteto & Son. Case No. 27-CD-47. August 18, 1964

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the Act following charges filed by J. O. Veteto & Son, herein called the Employer, alleging that United Brotherhood of Carpenters and Joiners of America, Local No. 515, AFL-CIO, Southern Colorado Building and Construction Trades Council, AFL-CIO, and Carpenters District Council of Southern Colorado, AFL-CIO, herein called the Respondents, threatened, coerced, and restrained Continental Consolidated Corporation, Glenn Siebert Dry Wall Company, and J. O. Veteto & Son, with an object of forcing or requiring the Employer to assign particular work to employees represented by the Carpenters rather than to employees represented by Wood, Wire and Metal Lathers International Union, Local No. 48, AFL-CIO, herein called Lathers. A hearing was held before Hearing Officer Allison E. Nutt on April 9 and 10, 1964. All 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. Respondents and Lathers filed briefs which have been duly considered.

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

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

1. The business of the Employer

J. O. Veteto & Son is engaged in the lathing and plastering business in Colorado and adjoining States. In the calendar year 1963, Veteto purchased materials valued at more than \$100,000 from suppliers in

Colorado who received the goods from manufacturers located in other States. We find that Veteto is engaged in commerce within the meaning of the Act.

2. The labor organizations involved

Respondents and Lathers are labor organizations within the meaning of Section 2(5) of the Act.

3. The dispute

A. *The work in issue*

Metal studs used in the erection of interior walls or partitions receive a surface of either plaster or dry wall material. The work in dispute here is the installation of metal studs which are to receive dry wall material together with the tracks to which they are affixed and the bracing material attached to them.

B. *The basic facts*

The Employer has a subcontract to install inside partitions in an underground headquarters for North American Air Defense Command (NORAD) being constructed by the Department of Defense at Colorado Springs, Colorado. Continental Consolidated Corporation, general contractor for the project, subcontracted the erection of inside partitions to Glenn Siebert Dry Wall Company which, in turn, subcontracted to Veteto the erection of the metal studs which are a basic component of the inside partitions. Siebert has a collective-bargaining agreement with the Carpenters which provides that all work be done by members of that union. Veteto has a contract with Lathers covering all its work and does not employ carpenters. Veteto assigned the installation of metal studs to lathers. Representatives of the Respondents requested Siebert to comply with the terms of its collective-bargaining agreement. In a telephone conversation with Respondents on March 9, 1964, Veteto was told, when he asked whether the job would be picketed, "there could be—more than likely there could be." He was also advised that whatever action was taken by the Carpenters would be supported by Respondent Building and Construction Trades Council.

C. *Contentions of the parties*

Respondents assert as a defense a 1962 interim agreement between the two International Unions here concerned which, assertedly, is still in effect and which recognizes that the disputed work belongs to carpenters. Respondents' chief reliance, however, is upon a March 2,

1964, decision of the National Joint Board for Settlement of Jurisdictional Disputes which awarded the work in question to carpenters. It further contends that area and industry practice support its claim to the subject work, which is a traditional function of carpenters.

Similarly, the Lathers relies upon area and industry practice to support its claim and contends that the installation of steel studs, regardless of the type of covering to be attached thereto, is an integral part of the lathers trade which should be performed by lathers.

The Employer, citing its contract with the Lathers, states that he has assigned the disputed work to lathers and that he does not employ carpenters; that replacement of the lathers, who can perform this intermittent work while not otherwise engaged, by carpenters, who would have no other duties to perform for Veteto, would be wasteful and inefficient; and that the assignment to the lathers is in accord with his past practice.

D. *Applicability of the statute*

The charges allege a violation of Section 8(b) (4) (D) of the Act. The record indicates that the Employer, at the insistence of Siebert, contacted officers of Respondents who asserted that unless the disputed work were assigned to its members, the Carpenters, supported by the Trades Council, would probably picket the project. 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.

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

1. *Collective-bargaining agreements*: The Employer has a collective bargaining agreement with the Lathers covering the employees to whom the Employer assigned the work in dispute. The Employer, who has never employed carpenters, does not have a contract with Respondents. The Employer's agreement with the Lathers does not treat specifically with metal studs which are to receive a dry wall covering.

2. *Company, area, and industry practice*: Both disputants introduced evidence of area and industry practice to support their respective positions as they have done in previous cases arising the same area,¹ but the results of their efforts are inconclusive. Since the Employer

¹ See, e.g., *Carpenters District Council of Denver & Vicinity, AFL-CIO (J. O. Veteto and Son)*, 146 NLRB 1242; 148 NLRB 350.

has never employed carpenters but has employed lathers exclusively in the installation of metal studs, the assignment of this work to the lathers is in accord with the Employer's past practice.

3. *Efficiency of operation*: It is conceded that both lathers and carpenters possess the skills or ability to erect metal studs. Respondents, however, do not claim the right to install all tracks and steel studs to be used in the building; they demand the work of erecting only such tracks and steel studs as will receive a dry wall covering. The installation of tracks, studs, and furring is precisely the same whether the final covering is a wet or dry wall material. The disputed work is not performed continuously while the Employer's operations are in progress, but is done intermittently, as required, by lathers, who, when not so engaged, are otherwise employed by the Employer in the exercise of contractual functions to which their claim is not contested on jurisdictional grounds. In these circumstances, the Employer's assignment of the disputed work to the lathers is more consistent with efficiency of operation than would be the interjection of a second craft, the carpenters, for the limited purpose of intermittently installing a portion of the metal studs to be used on the project. This is especially true when the Employer has no other work to which he may assign carpenters.

4. *Action of the joint board*: Both Unions rely on decisions of the national joint board to support their respective claims. Moreover, Respondents urge that in the instant dispute the joint board awarded the work to them in a decision of March 2, 1964. Inasmuch as the Employer had not agreed to be bound by a decision of the joint board in this matter, the decision by that body is merely one of the factors which we must consider in assigning the disputed work.²

5. *The interim agreement*: Respondents assert that the "Interim Agreement" of January 6, 1962, between the International representatives of the contending Unions should have binding force. That agreement purports to divide the disputed work between lathers and carpenters by assigning to carpenters, "The installation of metal studs—available or nonavailable—to receive finished materials other than plaster or sprayed-on or trowel applied materials done by Plasterers . . ." The Lathers contends that the interim agreement has been abrogated by the parties while Respondents contend it should be dispositive of the dispute herein, relying upon the case of *Acoustics & Specialties, Inc.*³ The *Acoustics* case, however, is distinguishable. There, the Board accorded determinative weight to the interim agreement only because the usually determinative criteria in such cases

² Local 964, *United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Carleton Brothers Company)*, 141 NLRB 1138.

³ Local Union No. 68, *Wood, Wire and Metal Lathers International Union, AFL-CIO (Acoustics & Specialties, Inc.)*, 142 NLRB 1073.

were not present therein and in the resulting "state of balance" the interim agreement was held controlling. Even assuming, therefore, that the interim agreement is still in force, the state of balance present in *Acoustics* does not obtain here and we, therefore, decline to accord controlling effect to the interim agreement.⁴

F. Conclusion as to the merits of the dispute

Upon consideration of all pertinent factors appearing in the entire record, we shall assign the disputed work to the lathers. They are as skilled in the performance of the work as the carpenters who compete for it and have performed it to the satisfaction of the Employer, who desires to retain them on the job. The present assignment of the disputed work to the lathers is consistent with their collective-bargaining agreement with the Employer, it conforms to the Employer's past practice, and the efficiency with which the lathers may accomplish the task demonstrates the superior claim of the lathers to the disputed work. We conclude that the Employer's assignment of the work to the lathers should not be disturbed. We shall, accordingly, determine the existing jurisdictional dispute by deciding that lathers, rather than carpenters, are entitled to the work in dispute. In making this determination, we are assigning the disputed work of the employees of the Employer who are represented by the Lathers but not to that Union or its members.

Determination of Dispute

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

1. Lathers employed by J. O. Veteto & Son, who are represented by Wood, Wire and Metal Lathers Local Union No. 48, AFL-CIO, are entitled to perform the work of erecting tracks and metal studs to receive dry wall on interior partitions in the underground headquarters for North American Air Defense Command at Colorado Springs, Colorado.

2. United Brotherhood of Carpenters and Joiners of America, Local No. 515, AFL-CIO; Southern Colorado Building and Construction Trades Council, AFL-CIO; and Carpenters District Council of Southern Colorado, AFL-CIO, are not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Employer to assign the above work to carpenters:

⁴ *Carpenters District Council of Denver & Vicinity, AFL-CIO (J. O. Veteto and Son)*, footnote 1, *supra*. Member Leedom agrees that this agreement is not entitled to controlling weight, but for the reasons stated in his dissenting opinion in *Acoustics & Specialties, Inc., supra*.

3. Within 10 days from the date of this Decision and Determination of Dispute, the Respondents named above shall notify the Regional Director for Region 27, in writing, whether they will or will not refrain from forcing or requiring the Employer, by means proscribed by Section 8(b) (4) (D), to assign the work in dispute to carpenters rather than lathers.

International Printing Pressmen and Assistants' Union of North America and Albany Printing Pressmen and Assistants' Union No. 23 and J. R. Condon & Sons, Inc.¹ Case No. 3-CD-111. August 18, 1964

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the Act, following a charge filed by J. R. Condon & Sons, Inc., herein called the Company, alleging that International Printing Pressmen and Assistants' Union of North America and Albany Printing Pressmen and Assistants' Union No. 23, herein called Pressmen, had violated Section 8(b) (4) (D) of the Act. Pursuant to notice, a hearing was held before Hearing Officer Arthur E. Neubauer on March 25, 26, and 27 and April 2 and 3, 1964. The Company; the Pressmen; Albany Typographical Union No. 4, International Typographical Union, AFL-CIO, herein called Local 4, ITU; and Albany, Troy and Vicinity Stereotypers' and Electrotypers' Union No. 28, International Stereotypers' and Electrotypers' Union of North America, AFL-CIO, herein called Stereotypers,² 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. Thereafter, all parties filed briefs before the Board.

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 Brown].

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

1. The business of the Company

The parties stipulated that J. R. Condon & Sons, Inc., a New York corporation, has its principal office and sole place of business at Albany, New York, where it is engaged in the business of commercial and news-

¹ The name of the Company appears as amended at the hearing.

² Local 4, ITU, and the Stereotypers are parties to the dispute. The International Typographical Union, AFL-CIO, herein called ITU, intervened on the basis of its local's being a party to the dispute and participated jointly with Local 4.