

Local 69, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO and Bellezza Company, Inc. and Local 472, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO. Case No. 22-CD-93. November 9, 1964

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the Act, following a charge filed by Bellezza Company, Inc., herein called the Company, alleging that Local 69, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, herein called the Respondent or Local 69, had violated Section 8(b)(4)(D) of the Act by inducing or encouraging employees of the Company to cease work for the purpose of forcing or requiring the Company to assign the work in dispute to employees who are members of the Respondent rather than to employees who are represented by International Hod Carriers, Building and Common Laborers Union of America, Heavy and General Laborers Local 472 of the State of New Jersey, AFL-CIO, herein called Laborers. A hearing was held before Hearing Officer Robert T. Snyder between May 11 and June 12, 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. Thereafter, briefs were filed by the Company, the Respondent, and the Laborers.

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

1. The business of the Employer

Bellezza Company, Inc., is engaged in the business of performing general excavation, sewer paving, and other construction work in the building and construction industry throughout New Jersey. During the past year, the Company performed construction services valued at more than \$50,000 for the city of Jersey City, New Jersey, which is constructing a general maintenance facility and garage at the cost of more than \$3,000,000, of which more than \$1,000,000 was derived from a grant by the Federal Government pursuant to its Home and Housing Finance Administration program. The Company is the recipient of a prime contract in connection with this construction in the amount of \$715,645. We find that the Employer

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 [Chairman McCulloch and Members Leedom and Brown].

is 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 herein.

2. The labor organizations involved

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

3. The dispute

a. *The work in issue*

The work in dispute is the installation of nonmetallic outside sanitary and storm sewers (exclusive of reinforced concrete sewers measuring 96 inches in diameter) as part of the site development project at the Jersey City worksite.

b. *The basic facts*

The Company, one of six prime contractors engaged in the erection of a shop and administration building on the project, was awarded the contract for site development, which calls for the construction of service roads, paving and landscaping portions of the site, and the installation of cement pipe storm drain and sanitary sewer lines. The Company commenced pipe installation at the site in December 1963, assigning all of such work to employees represented by the Laborers. In the latter part of February 1964, Zampella, Respondent's business manager, appeared at the site four or five times and demanded of the Company the work of unloading, handling, and installing storm and sanitary sewers and all laterals from the main sewer line. On March 20, 1964, the National Joint Board for Settlement of Jurisdictional Disputes of the Building and Construction Trades Department, AFL-CIO, acting upon the Respondent's unilateral submission of the instant dispute, awarded to the plumbers and steamfitters the work of "Unloading, handling, distributing and installing cast iron pipe used for sanitary sewer and also reinforced concrete pipe laterals from the interceptor line to the building picking up the rain leaders. . . ."

In the interval between the award of the contract to the Company and the initiation of pipe installation, the specifications in the contract were amended by a change order which substituted asbestos cement pipe for the cast iron pipe required in the original specifications. Respondent has continued its demand for the installation of this pipe despite the change in its composition. But, after the Joint Board's award, which explicitly excepted such pipe from its scope, Respondent did not demand installation of reinforced

concrete sewers measuring 96 inches in diameter. Installation of pipe commenced in December 1963. On April 1, 1964, at a meeting among representatives of the Company, Respondent, and Jersey City officials, Respondent persisted in its demand for the disputed work and the Company continued to reject the demand. On April 3, 1964, a single picket began patrolling the two entrance gates to the site with signs reading "Local 69, Plumbers on strike against Bellezza Company—no other trades involved." On Monday, April 6, a meeting among the disputants and Jersey City officials was held at the Jersey City hall at which Zampella reiterated Respondent's demand for the installation of all sewer pipe, with the exception of 96-inch concrete pipe, and the company president, Bellezza reaffirmed the assignment of the disputed work to the Laborers. Picketing continued until April 30, when Respondent, during hearing on an application for an injunction in a U.S. District Court, entered into a stipulation in which it agreed to cease picketing until the matter was finally resolved by the Board.

Contentions of the Parties

In support of its claim to the disputed work, Respondent relies on the National Joint Board award of March 19, 1964, and asserts that area and industry practice, existing agreements between the contending unions, and the superior competence of plumbers to perform the work resulting from their apprenticeship training, favor it.

Laborers contends that the disputed work should be awarded to it because of its collective-bargaining agreement with the Company, the assignment of the work to laborers by the Company, area and industry practice, and their superior competence for the task resulting from their extensive experience with such installation.

The Company endorses the position of the Laborers and further contends that it has never employed plumbers and that it has never consented to be bound by any arbitration awards or union agreements.

Applicability of the Statute

The charge, which was duly investigated by the Regional Director, alleges a violation of Section 8(b)(4)(D) of the Act. The Regional Director was satisfied upon the basis of such investigation that there was reasonable cause to believe that a violation had been committed and directed that a hearing be held in accordance with Section 10(k) of the Act. On the basis of the entire record, including Respondent's picketing to force the Company to assign the disputed work to its members, we find there is reasonable cause to believe that a violation of the Act has occurred and that the dispute is properly before the Board for determination.

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*: During the entire period involved herein, Laborers and the Company have been parties to collective-bargaining agreements covering the employees to whom the Company assigned the work in dispute. The Company has no contract with Respondent and it has never employed plumbers.

2. *Company, area, and industry practice*: Although both disputants offered considerable evidence on area and industry practice, much of the evidence did not relate to the type of work in dispute here, and, in any event, the results were inconclusive. Since the Company does not employ plumbers and has used laborers exclusively for pipe installation for many years, the assignment of this work to laborers accords with the Company's past practice.

3. *Charters, constitutions, and agreements*: Both disputants rely heavily upon the original jurisdictional grants from the AFL to their parent international organizations dating from the early years of this century and upon numerous arbitration awards and union compacts, including what has come to be known as the 1941 Agreement between the two International Unions. It appears that few, if any, of these awards or agreements, or any of the various interpretations placed upon them, have proved acceptable to the adversely affected disputant. Clearly, they have neither settled this longstanding controversy nor established an effective means of resolving it.² This factor, therefore, cannot weight the balance in favor of either disputant.

4. *Action of the Joint Board*: Both unions support their respective claims to the disputed work by citing previous decisions of the National Joint Board. Respondent, in addition, urges that the March 19, 1964, action of the Joint Board in the instant dispute, wherein it awarded the work in question to plumbers, should be dispositive of this matter. The Employer had not consented to be bound by a decision of the National Joint Board and had, in fact, affirmatively asserted its unwillingness to be bound by any jurisdictional dispute determination in which it had not participated or exercised its option of selecting the forum which would finally determine the dispute. Under these circumstances and in the absence

² *Local 5, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (Arthur Venneri Company)*, 145 NLRB 1580.

of any showing in the record as to the basis of their determination, the Joint Board award is merely one of the factors we must consider in making our determination.³

5. *Efficiency of operation:* It is apparent that both disputants can accomplish the disputed task with comparable competence. Respondent's effort to establish that plumbers were more competent to perform the task of installing pipe by virtue of their apprenticeship training did not demonstrate that the installation in question evoked the gamut of skills imparted during apprenticeship or that it involved anything more than a simple manual operation which may be learned in a brief period of training on the job. Respondent, moreover, concedes the propriety of the laborers' performing identical installation when the pipe in question underlies streets and highways. Furthermore, Respondent does not claim all of the work presently performed by the laborers in connection with the Employer's site development contract but only such portions as involves the handling and laying of pipe. Thus, if Respondent's demands were acceded to, it would be necessary for the Employer to divide the total operation between two employee groups, with the laborers preparing the ditch and performing the requisite filling, tamping, and paving operations, while the plumbers directed their efforts exclusively to the pipelaying portion of the entire operation. Obviously, the preparation of the ditch, the laying of pipe, and the filling and paving of the ditch are performed more efficiently when done as a continuous, integrated operation by a single employee group. The Employer's assignment of the disputed work to laborers is therefore consistent with efficiency of operation.

Conclusion as to the Merits of the Dispute

Upon consideration of all pertinent factors appearing in the record we shall assign the disputed work to the laborers. They have performed it to the satisfaction of the Employer, who desires to retain them on the job, and they are as skilled in the performance of the disputed work as the plumbers who demand it. The present assignment of the work in dispute to the laborers is consistent with the Employer's past practice and with its collective-bargaining agreement with the Laborers. The fragmentation of the job into separate operations in which laborers would prepare the ditch for the reception of the pipe and plumbers would unload and install the pipe is not as efficient an operation as the existing procedure whereby laborers accomplish the integrated task of preparing the ditch and laying the pipe in a single sequential operation. We shall,

³ *Carpenters District Council of Denver & Vicinity, AFL-CIO (J. O. Veteto and Son)*, 146 NLRB 1242; *Local 964, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Robert A. W. Carleton, d/b/a Carleton Brothers Company)*, 141 NLRB 1138.

accordingly, determine the instant jurisdictional dispute by deciding that laborers, rather than plumbers, are entitled to the work in dispute. In making this determination, we are assigning the work to the employees who are represented by the Laborers 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. The laborers employed by Bellezza Company, Inc., who are represented by Local 472, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, are entitled to perform the disputed work of installing nonmetallic outside sanitary and storm sewers, in connection with the site development project identified as the Central Maintenance Facility and Garage, Route 440, Jersey City, New Jersey.

2. Local 69, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Company to assign the above-described disputed work to plumbers.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 69, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, shall notify the Regional Director for Region 22, in writing, whether it will or will not refrain from forcing or requiring the Company, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to plumbers rather than laborers.

Cemetery Service Corporation (Parkview and Springdale Cemeteries) and Teamsters, Chauffeurs and Helpers Local Union No. 627, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. *Case No. 13-RC-10021. November 9, 1964*

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 Hearing Officer Samuel Jacobson. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.