

2. Shopmen's Local 509, International Association of Bridge, Structural and Ornamental Ironworkers is, and during all times material was, a labor organization within the meaning of Section 2(5) of the Act.

3. All employees covered by the contract between Ador and the Union which was in effect on June 7, 1963, during all times material constituted, and now constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material the Union has represented the majority of employees in the appropriate unit and by virtue of Section 9(a) of the Act has been, and now is, the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining with respect to grievances, labor disputes, rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. By refusing to answer all pertinent inquiries on and after June 7, 1963, of the Union and of its counsel about Ador's intention to discontinue any of its operations, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

6. By unilaterally discontinuing its window and inexpensive door operations on June 10, 1963, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

7. By refusing to discuss and negotiate with the Union on and after June 7, 1963, its intention to discontinue its window and inexpensive door operations, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

---

**Structural Steel and Bridge Painters of Greater New York,  
Local 806, AFL-CIO and Steele & Associates, Inc. Case No.  
29-CD-6 (formerly 2-CD-307). February 10, 1965**

### DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Steele & Associates, Inc., herein called the Employer, alleging that the Structural Steel and Bridge Painters of Greater New York, Local 806, AFL-CIO, herein called the Painters, had violated Section 8(b)(4) (D) of the Act. Pursuant to notice, a hearing was held before Hearing Officer Jacques Schurre between August 19 and October 19, 1964. The Employer, the Painters, and United Slate, Tile and Composition Roofers, Damp & Waterproof Workers Association, Local Union No. 8, herein called the Waterproofers, 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.<sup>1</sup> The rulings of the Hearing Officer 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 National Labor Relations Board has delegated its powers in connec-

<sup>1</sup> Waterproofers Local Union No. 154 did not enter an appearance at the hearing.  
150 NLRB No. 164.

tion with this case to a three-member panel [Chairman McCulloch and Members Fanning and Jenkins].

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

*A. The business of the Employer*

The Employer, a Georgia corporation with its principal office and place of business in Atlanta, Georgia, is engaged in business as corrosion engineers and contractors, specializing in the field of protective coating applications. Several years ago the Employer opened a branch in Glen Head, Long Island, New York, which it calls its Northeastern Division. The Employer's business is conducted in several States, and during the past year the value of the materials purchased by it and shipped from outside the State in which the work was performed amounted to more than \$300,000. We find that the Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

*B. The labor organizations involved*

The parties stipulated, and we find, that the Painters and the Waterproofers are labor organizations within the meaning of Section 2(5) of the Act.

*C. The dispute*

1. The work in issue

The disputed work which gave rise to this proceeding concerns the surface cleaning of steel pipe piles and sheet piling by sand or grit blasting, to be followed by the application of two coatings of "coal tar epoxy resin similar and equal to Tarsset as manufactured by the Pittsburgh Coke and Chemical Company or Arocoat as manufactured by the Brooklyn Paint and Varnish Company." The piling is destined to be driven into the Flushing Bay bed as the foundation for runway extensions at La Guardia Airport.

2. The background facts

On April 9, 1964, Steers-Spearin-Tully-Gerwick (herein called Steers), a joint venture holding the prime contract from the Port of New York Authority for the construction of runway extensions at La Guardia Airport, subcontracted the above-described work to the Employer. The work is being performed in the yard of Sound Ship Building Corporation (herein called Sound), at College Point, Long Island, New York. The work commenced April 21, 1964, and was assigned to employees who are represented by the Waterproofers.

After the Employer had been awarded the contract it ordered a grit-blasting machine, called the Pangborn Rotoblast, to be used in cleaning the piles.<sup>2</sup> The machine was delivered, in parts, on June 23 and was assembled by members of the Waterproofers and other employees of the Employer under the guidance of a Pangborn representative who, at the same time, instructed the employees in the functioning of the various parts and in the operation of the machine. The Employer began full-scale operation of the Rotoblast machine on August 8. Prior to that time the piles had been cleaned in the conventional manner by sandblasting.

Before Steers subcontracted the disputed work to the Employer a jurisdictional dispute had arisen between the Painters and the Waterproofers over similar work at a pier job on the East River. The dispute was referred to the executive committee of the Building Trades Employers Association of the City of New York (herein called BTEA) and on January 17, 1964, the committee awarded the work of applying protective coating to steel piles to the Waterproofers. On February 6 the BTEA decided, following a request for an interpretation, that the intent of its January 17 decision was also to assign any preparatory work, including sandblasting, to the Waterproofers. The decision was reaffirmed on March 5. The Painters then appealed to the National Joint Board for Settlement of Jurisdictional Disputes and on May 28 the Joint Board reversed the BTEA decision and assigned the disputed work to the Painters, effective only as to that particular pier job. Thereafter, on June 19, the BTEA rescinded its prior decision, adopted the decision of the Joint Board, and in accordance with its policy, made the decision applicable areawide.

After the BTEA had adopted the decision of the Joint Board the business representative of the Painters, James Bishop, presented a claim to the Employer for the disputed work. Herbert Schmidt, the Employer's manager, told Bishop that the Employer had invested \$75,000 in the Rotoblast machine and asked Bishop whether the Painters would have any objection to using the machine. Bishop replied that the Painters would not use the machine. Schmidt then stated that the Painters would not be employed since, apart from any other consideration, the Employer had purchased the Rotoblast machine specifically for the La Guardia job and failure to use it would result in serious financial loss to the Employer.

In the latter part of June, Bishop informed Schmidt that since the Employer had failed to reassign the disputed work to the Painters, Sound's premises, as well as the La Guardia jobsite, would be

<sup>2</sup> This is one of four Pangborn Rotoblast machines in use in the country at the time of the hearing.

picketed. On June 30 Painters sent a telegram to Steers, the general contractor, stating that because of the Employer's refusal to reassign the disputed work to Painters, the union would be compelled to picket the jobsite to protect its jurisdiction. A similar telegram was sent to the Port of New York Authority.

The Painters began picketing at Sound's premises on July 2, and on the same date the Employer filed a charge alleging violations of Section 8(b)(4)(i) and (ii)(D) of the Act. On July 17 the Painters voluntarily terminated the picketing. On July 30 a petition for an injunction was filed by the Board in the United States District Court for the Southern District of New York. On August 4 the Painters executed a stipulation agreeing to the entry of a temporary injunction pending the Board's final disposition of this case. On August 5 it was "so ordered" by the court.

### 3. Contentions of the parties

The Employer contends that it is in the waterproofing business and has always employed waterproofers to perform this work and that its assignment of work should be honored. The Employer also contends that at the time it bid for the La Guardia job the BTEA had assigned the work to the Waterproofers, whose rates of pay for the work are substantially lower than those required by the Painters, and that it would be inequitable now to require the hiring of Painters on the La Guardia job.

The Waterproofers contends, as did the Employer, that the Employer's past practice in hiring only Waterproofers is indicative of their ability to perform the work and that the Employer's practice is a factor in favor of assignment of the work to them. The Waterproofers further contends that custom and practice in the industry in the area is to assign the work to them.

The Painters contends that Tarsol is a protective coating which may be applied with a brush and therefore traditionally, and by virtue of an agreement between the Painters and the Waterproofers, falls within the ambit of the jurisdiction of the Painters. The Painters also relies on the Joint Board decision and the subsequent adoption of that decision by the BTEA which made the decision areawide.

#### *D. Applicability of the statute*

Section 10(k) of the Act empowers the Board to determine the dispute out of which an 8(b)(4)(D) charge has arisen. However, before the Board proceeds with a determination of dispute, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. We are satisfied, on the facts set

forth above, that there is reasonable cause to believe that the Painters engaged in conduct proscribed by Section 8(b)(4)(i) and (ii) of the Act for an object proscribed by clause (D) thereof; namely, to force the assignment of work to its members which was being performed by employees represented by the Waterproofers. We conclude, accordingly, 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 the various relevant factors, and as the Board has stated, its determination in a jurisdictional dispute case is an act of judgment based upon commonsense and experience and a balancing of such factors.<sup>3</sup> In this case the factors discussed below are determinative.

#### 1. Collective-bargaining agreements

The Employer has a collective-bargaining agreement with the Waterproofers covering the employees to whom the Employer assigned the work in dispute. It has no collective-bargaining agreement with the Painters. Its agreement with the Waterproofers is clearly intended to cover the application of epoxy protective coatings to steel piling, the work here in dispute. Thus by its terms it covers:

Article II (a)—The application and the installation of all . . . waterproofing on or in all types of structures or any part thereof; such as . . . beams, pipes. . . .

The application and installation of the above work with the following materials, whether applied by use of brush, trowel, mop, roller, spray or any other method; Tar Asphalt, Pitch, Plastic Slate . . . or any other bituminous material or bitumen saturated or bitumen coated materials, including all kind of . . . Epoxy Coatings. . . .

Article II (f)—. . . The application of bituminous materials or pitch enamels on steel or metal where used for protection from corrosive action by water, acids, or other chemicals or fluids.

This constitutes a specific assignment of the disputed work to the Waterproofers.

<sup>3</sup> *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, IBEW (Columbia Broadcasting System)*, 364 U.S. 573; *International Association of Machinists, Lodge No. 1743 (J. A. Jones Construction Company)*, 135 NLRB 1402, 1411.

## 2. *Efficiency and economy of operation*

The Employer has declared a definite preference for the assignment of the disputed work to the Waterproofers based upon the efficiency of operations and upon willingness of the Waterproofers to operate the Pangborn machine. The record shows that the Employer has always employed Waterproofers on this type of work and that he bid for and received his subcontract on the assumption, based on the original BTEA decision, that Waterproofers would be employed at a rate substantially lower than that demanded by the Painters. Moreover, the Employer purchased the Pangborn machine specifically for this job, and at a time when the original BTEA decision was still outstanding, and the Waterproofers helped to assemble the machine and have been trained in its use. The Painters, on the other hand, has indicated that it would not permit the use of the machine in performing the work in dispute. We find, therefore, that efficiency of operation clearly favors the Waterproofers.

## 3. *Company, area, and industry practice*

It appears that the Painters has performed the work of coating steel piles in the New York City area, but the evidence shows that a preponderance of this type of work is done by waterproofing contractors employing members of the Waterproofers. The Employer has always employed Waterproofers, and never Painters, to perform the work in dispute. We find that Company and area practice favor the assignment of work to employees represented by the Waterproofers.

## 4. *Other considerations*

The Painters relies upon the Joint Board award in the controversy at the pier job on the East River. 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 only one of the factors which we must consider in assigning the disputed work. Both unions submitted evidence of other Joint Board awards, but the result of such evidence is inconclusive. Neither union has been certified by the Board as the exclusive bargaining representative for any of the Employer's employees. The skills necessary in sand-blasting and spraying steel piling are possessed by employees represented by both unions. And since the record does not establish that the coating, Tarsel, used on the steel piling herein is one to be applied with a brush, the 1920 agreement between the Painters and the Waterproofers is of no value in making an assignment of the disputed work.

*F. Conclusions as to the merits of the dispute*

Upon consideration of all pertinent factors in the entire record, we shall not disturb the assignment of the disputed work to employees represented by the Waterproofers. This assignment is consistent with contractual obligations, follows the predominant custom and practice in the area, and promotes efficiency and economy of operation. Accordingly, we shall determine the existing jurisdictional dispute by deciding that employees represented by the Waterproofers, rather than employees represented by the Painters, are entitled to the work of cleaning steel pipe piles and sheet piling by sand or grit blasting and applying the coatings specified in the Employer's subcontract under the La Guardia Airport runway extensions contract. In making this determination we are awarding the work in question to employees represented by the Waterproofers, but not to the Painters 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 the entire record in this proceeding, the Board makes the following determination of dispute pursuant to Section 10(k) of the Act:

1. Employees employed by Steele & Associates, Inc., who are represented by the United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Association, Local Unions No. 8 and No. 154, are entitled to the work of surface cleaning of steel piles and sheet piling by sand or grit blasting, and the application of coatings of coal tar epoxy resin similar and equal to Tarsel as manufactured by the Pittsburgh Coke and Chemical Company or Arocoat as manufactured by the Brooklyn Paint and Varnish Company as specified in the Employer's subcontract under the contract for the La Guardia Airport runway extensions.

2. Structural Steel and Bridge Painters of Greater New York, Local 806, AFL-CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force Steele & Associates, Inc., to assign the above work to employees who are currently represented by it.

3. Within 10 days from the date of this Decision and Determination of Dispute, Structural Steel and Bridge Painters of Greater New York, Local 806, AFL-CIO, shall notify the Regional Director for Region 29, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to employees represented by it rather than to employees represented by the Waterproofers.