

4. Since May 1, 1961, a majority of Respondent's employees in the appropriate unit, described immediately above, have been members of the Union, and at all times since said date, the Union has been the duly designated and selected representative of a majority of the employees in said appropriate unit for the purposes of collective bargaining, and, by virtue of Section 9(a) of the Act, has been, and now is, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to grievances, labor disputes, pay, wages, hours of employment, and other terms and conditions of employment

5. The allegations of the complaint, as amended, that Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8(a)(3) and (1) of the Act, have not been sustained.

RECOMMENDED ORDER

It is recommended, upon the basis of the foregoing findings of fact and conclusions of law, that the complaint, as amended, be dismissed in its entirety.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 146 and Craftsman Construction Co., Inc. and International Hod Carriers, Building and Common Laborers Union of America, Local No. 354, AFL-CIO, Party in Interest. *Case No. 27-CD-56. March 24, 1965*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Craftsman Construction Co., Inc., herein called the Employer, alleging a violation of Section 8(b)(4)(D) of the Act by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 146, herein called Respondent. The charge alleges, in substance that the Respondent induced and encouraged employees to engage in a strike or refusal to work, and threatened, coerced, and restrained the Employer, and others, with an object of forcing or requiring Craftsman Construction Co., Inc., to assign particular work to employees represented by Respondent rather than to employees represented by International Hod Carriers, Building and Common Laborers Union of America, Local No. 354, AFL-CIO, herein called Laborers. Pursuant to notice, a hearing was held before Hearing Officer Allison E. Nutt, on December 3, 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. The brief filed by the Employer has been duly considered.

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

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

I. THE BUSINESS OF THE EMPLOYER

Craftsman Construction Co., Inc., is a New Mexico corporation, presently engaged in the general construction business in Colorado. During the calendar year 1964, it received goods valued at more than \$50,000 which came to it directly from other States. We find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

All parties stipulated, and we find, that Respondent and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Basic facts*

In June 1964 the Employer, a general contractor, was awarded a contract for the construction of certain buildings at the Southern Colorado State College in Pueblo, Colorado, and began work thereafter. This construction is not scheduled for completion until December 1965.

The work in dispute involves the loading, transporting, and unloading of wooden form material at the construction site. These wooden forms are used in pouring concrete for buildings. After use in one building they are removed and transported by truck to another building where they are reused. The Employer has available four trucks of different sizes for transporting form material from one location to another, although one truck is seldom used, and a pickup truck is used primarily for personnel transportation. These vehicles are operated for short periods of time during the day when transporting the form material, and possibly more than one vehicle will be in use at the same time.

The Employer assigned the work of loading, unloading, and transporting the form material to its own employees who are represented by the Laborers. This was done pursuant to a collective-bargaining agreement between the Employer and Colorado Laborers' District Council which the signatories interpret as requiring the assignment of the disputed work to members of the Laborers' union.

The Employer does not employ members of Respondent and has never had an agreement with Respondent.

On August 1, 1964, about 30 days after the first movement of trucks on the jobsite, Robert Menapace, organizer for Respondent, approached Duane Lucas, the Employer's job superintendent, and said the Respondent wanted teamsters on the Employer's work and that he would not take no for an answer. About 2 weeks later another Teamsters' representative stated to Lucas that he would like to get some teamsters on the job. Again on September 20, 1964, Menapace talked to Lucas and claimed that there was work being done on the job that should be assigned to teamsters. Finally, on October 27, 1964, Menapace and Fred Beirig, president and business manager of Respondent, told Lucas that either teamsters would be put on any vehicle that moved construction equipment or material or there would be a work stoppage. That same day, Beirig called Frank Hall, Employer's president, at Denver, and told him to get teamsters on the job or else there would be picketing, but did not identify the work to which he wanted teamsters assigned. Lucas and Hall both explained to Respondent's representative that the Employer had no agreement with the Teamsters, had no employees who were teamsters, and had no work for teamsters.

On October 28, Respondent placed pickets near the jobsite with signs reading that the driver of equipment on the job is not a member of Local 146. As a result of the picketing, trucks were stopped and a number of trucks turned back, interfering with the delivery of material and supplies. Picketing continued approximately 4 days, after which the pickets were removed by agreement.

Neither Respondent nor Laborers has been certified as bargaining representative of the employees performing the disputed work. The parties stipulated that there is no agreed-upon method for the adjustment of this dispute which would be binding on all the parties.

B. Contentions of the parties

It appears that Respondent's main contention is that the work of driving trucks has traditionally been assigned to employees represented by Teamsters. Respondent claims to have several agreements with employers in the Pueblo area which call for the assignment of the disputed work to its members.

The Employer, on the other hand, contends that it is bound by the terms of the present bargaining agreement with the Laborers to assign the work in dispute to laborers represented by Local 354. It further argues that it has always been the Employer's practice to assign such work to laborers. The Employer also takes the position

that the practice in the Pueblo area is to assign such work to laborers. Finally, the Employer contends that efficiency of its operation supports its present work assignment.

The Laborers essentially adopts the contentions of the Employer and also points to its manual of jurisdiction of the Hod Carriers' International Union which outlines its craft jurisdictional claims and covers the work in dispute.

C. Applicability of the statute

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

The record shows that the Employer assigned the disputed work to employees represented by Laborers Local 354, whereupon Respondent claimed that its members were entitled to the work. The Respondent thereafter threatened to picket and did picket the Employer's jobsite for 4 days and, as a result of the picketing, deliveries of supplies and material were not made. Respondent does not deny that it made a demand on the Employer for the work, and when it was refused, it placed a picket on the jobsite, which interfered with delivery of supplies and material. It is clear that the object of Respondent's threats and picketing was to force the Employer to change work assignments, an object prohibited by Section 8(b) (4) (D). We find therefore that there is reasonable cause to believe that a violation of Section 8(b) (4) (D) has occurred, and the dispute is properly before the Board for determination under Section 10(k) of the Act.

D. The merits of the dispute

There is no claim by either Union, nor does the record show, that any special skill or training is required to load, transport, and unload form material, or that either of the two competing groups of employees is more capable than the other of performing the disputed work. The Board has not issued a certification of bargaining representative nor has there been any jurisdictional awards by joint boards. Although these factors usually considered by the Board in making jurisdictional awards are not present in this proceeding, there are other facts which we find persuasive in making a determination.

1. Collective-bargaining agreements

The record shows that the Employer has had contractual relations with the Laborers for some time. Prior to beginning construction

on the Southern Colorado State College campus at Pueblo, the Employer had agreed to be bound by the agreement negotiated with the Laborers covering the employees to whom the Employer assigned the work in dispute. Although the contract does not specifically define the disputed work, it can be interpreted to cover such work, and the Laborers and the Employer have so interpreted it in the past. The Employer has no contract with the Respondent.

2. Company and area practice

It has been the practice of the Employer since it began operations, approximately 16 years ago, to use Laborers to perform the disputed work. Further, the Employer has twice worked in the Pueblo area in the past and assigned laborers to load, unload, and distribute form materials on the jobsite. The Employer does not now employ teamsters, and has not employed a teamster for some years.

In support of its claim, Respondent introduced evidence that about 15 contracts had been negotiated with other contractors specifically awarding the type of work in dispute here to teamsters, but named only one local Pueblo contractor as signatory to such contract. On the other hand, the Laborers claim that the area practice is to consider the truck as a tool to be used at the convenience of the mechanic, and that laborers drive the trucks in the distribution of material. In support of this claim, the president of the Pueblo General Contractors Association, of which 12 contractors are members, testified that teamsters drive trucks initially to the jobsite, and thereafter when material is being reused and shifted it is the area practice of laborers to do the work. The president of the Allied Contractors Association, which association has 40 or 45 contractors, similarly testified. In addition, the Laborers offered letters written by representatives of five construction companies in Pueblo and one union stating that the practice was to use laborers for distribution of materials on the jobsite. Thus the assignment of the disputed work here to laborers accords with the practice of the majority of employers in the area.

3. Efficiency of Employer's operation

After a concrete job is poured, the Employer uses a composite crew of carpenters and laborers to remove the form material. The material is then loaded on a truck, transported to where it is to be reused, unloaded, and again a composite crew of carpenters and laborers erect the form material for reuse. Obviously, the work can be performed more efficiently when done in a continuous operation by laborers who work closely with the carpenters and who understand the numbering and sequence of the forms. The use of

trucks in this process fluctuates with the pouring of concrete and on occasions trucks are used simultaneously. A driver of a truck is actively engaged in performing the disputed work only 20 percent of the day, which includes loading and unloading time. Since the work in dispute is not of sufficient duration to justify employment of a permanent teamster, laborers are used to load, drive, and unload the trucks since they possess the necessary skills and can be utilized on other operations as the work demands. Thus, the Employer's assignment of the disputed work is consistent with the efficiency of its operations.

Conclusions as to the merits of the dispute

Upon consideration of all relevant factors appearing in the record, we shall assign the disputed work to the laborers who have performed the work in the past to the satisfaction of the Employer, which desires to retain them on the job in order to avoid fragmentation of the job into separate operations. This assignment of the disputed work to the laborers is consistent with the Employer's past practice, the practice of other employers in the area, and the interpretation that the Employer and the Laborers give their collective-bargaining contract. Our determination is limited to the particular controversy which gave rise to this proceeding. In making this determination, the Board is assigning the disputed work to laborers, who are represented by Laborers Local 354, but not to that Union or its members.

In view of the above, we find that Respondent was not and is not entitled by means proscribed by Section 8(b)(4)(i) and (ii)(D) of the Act to force or require Craftsman Construction Co., Inc., to assign loading, transporting, and unloading form material on the jobsite to teamsters rather than to laborers.

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 engaged as laborers, currently represented by International Hod Carriers, Building and Common Laborers Union of America, Local No. 354, AFL-CIO, are entitled to perform the work of loading, transporting, and unloading form material on the jobsite for Craftsman Construction Co., Inc.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 146, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Employer to assign the aforementioned work to teamsters who are represented by it.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 146, shall notify the Regional Director for Region 27, 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 teamsters rather than to laborers.

Rice Lake Creamery Company and General Drivers & Helpers Union, Local 662, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

Case No. 18-CA-978. March 24, 1965

SUPPLEMENTAL DECISION AND ORDER

On June 23, 1961, the National Labor Relations Board issued a Decision and Order in the above-entitled case,¹ directing, *inter alia*, that the Respondent make whole certain employees discriminatorily refused reinstatement by the Respondent. Thereafter, the Board's Order was enforced in full by the United States Court of Appeals for the District of Columbia Circuit,² including its reinstatement and backpay provisions. Subsequently, the Respondent's petition to the Supreme Court of the United States for a writ of certiorari was denied by the Court.³

On March 29, 1963, the Regional Director for Region 18 issued and served upon the parties a backpay specification and notice of hearing, and issued amendments to this specification on May 7, 1963. The Respondent filed an answer to the original specification on April 29, 1963.

Pursuant to notice, a hearing was held before Trial Examiner Samuel Ross for the purpose of determining the amounts of backpay due the discriminatees. Also, during the hearing, evidence was adduced concerning the circumstances attending Respondent's offers of reinstatement which were alleged to be legally insufficient by the General Counsel. On December 13, 1963, the Trial Examiner issued his attached Supplemental Decision, in which he awarded specific amounts of backpay to the 25 discriminatees and also made findings and recommendations concerning Respondent's offers of reinstatement. Thereafter, the Respondent filed exceptions to the Trial

¹ 131 NLRB 1270.

² *General Drivers and Helpers Union, Local 662, International Brotherhood of Teamsters, etc. v. N.L.R.B.*, 302 F. 2d 908.

³ 371 U.S. 827.