required tax withholdings; and also, in the case of Leroy Jordan, additional undetermined amounts which may have accumulated or which may accumulate on and since October 1, 1964, until said Leroy Jordan is offered full reinstatement to his former or a substantially equivalent position in accordance with the requirements of the Board Order and court decree herein; and that the Regional Director for Region 12 be authorized to take appropriate steps consistent with the findings and conclusions hereinabove set forth, without prejudice to the conduct of additional backpay proceedings.

United Brotherhood of Carpenters and Joiners of America, Local 1061, AFL–CIO; Central Arizona District Council of Carpenters, AFL–CIO *and* Packer Construction Company

United Brotherhood of Carpenters and Joiners of America, Local 1089, AFL–CIO; Central Arizona District Council of Carpenters, AFL–CIO, and R. E. Barrett [1] *and* Klaas Brothers, Inc.[2]

Cases Nos. 28–CD–58 and 28–CD–59. April 13, 1965

DECISION AND DETERMINATION OF DISPUTES

This is a consolidated proceeding pursuant to Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Packer Construction Company (Case No. 28–CD–58) and Klaas Brothers, Inc. (Case No. 28–CD–59), alleging that Carpenters Locals 1061 and 1089, respectively, and Central Arizona District Council of Carpenters, AFL–CIO, herein called the Respondents, had induced and encouraged employees to strike for the purpose of forcing or requiring subcontracting employer Gray Plastering Company, Inc. (Case No. 28–CD–58), herein called Gray, and employer Klaas Bros., Inc., to assign particular work to members of the Respondents rather than to members of Wood, Wire & Metal Lathers' International Union, Local 374, AFL–CIO, herein called Lathers. A consolidated hearing was held before Hearing Officer Lewis S. Harris on September 23, 24, 25, 26, and 28, 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 Respondents, the Lathers and Klaas Bros., Inc., and Gray jointly, filed briefs which have been duly considered.

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

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[1] R. E. Barrett is secretary-treasurer of Central Arizona District Council of Carpenters, AFL–CIO.

[2] The Employer's name appears as amended at the hearing

Upon the entire record in these cases, the Board makes the following findings:

1. The businesses of the Employers.

Packer Construction Company, herein called Packer, is engaged in the business of general contracting in several States of the United States, including the State of Arizona. At all times material herein it was engaged in, and is engaging in, the construction of the Marcus J. Lawrence Memorial Hospital at Cottonwood, Arizona, pursuant to a contract valued in excess of $1 million. During the 12-month period preceding the hearing, Packer purchased materials, supplies, and equipment directly from outside the State of Arizona costing more than $50,000.

Gray Plastering Company, Inc., is a lathing and plastering contractor in several States of the United States, including the State of Arizona, and at all times material herein has been engaged as a subcontractor for installation of metal wall studs and drywall on the construction of the Marcus J. Lawrence Memorial Hospital at Cottonwood, Arizona, pursuant to a subcontract valued in excess of $100,000. During the 12-month period preceding the hearing, Gray purchased materials, supplies, and equipment valued in excess of $50,000 from suppliers in the State of Arizona, who in turn purchased and received said materials, supplies, and equipment directly from outside the State of Arizona.

Central Towers Building, Inc., at all times material herein has been engaged in the costruction of a new office building in Phoenix, Arizona, valued in excess of $2 million. In connection with the construction of said building, Central Towers Building, Inc., awarded the contract for the construction of the building to Southern Builders of Arizona, Inc., a wholly owned subsidiary of Southern Builders, Inc., of Memphis, Tennessee. In connection with the construction of said building, Southern Builders of Arizona, Inc., purchased materials, supplies, and equipment directly from outside the State of Arizona valued in excess of $100,000, and awarded the contract for the installation of metal studs and drywall to Klaas Bros., Inc.

Klaas Bros., Inc., a plastering, drywall, and painting contractor, has its principal office in Phoenix, Arizona. During the 12-month period preceding the hearing, Klaas Bros., Inc., purchased and received materials, supplies, and equipment directly from outside the State of Arizona valued in excess of $50,000.

The parties stipulated to the facts as set forth above, and further stipulated that these named Employers are engaged in commerce within the meaning of the National Labor Relations Act, ts amended.

We find that Packer Construction Company, Gray Plastering Company, Inc., Southern Builders of Arizona, Inc., and Klaas Bros., Inc., are engaged in commerce within the meaning of the Act.

2. The labor organizations involved.

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

3. The dispute.

The Work in Issue

Metal studs used in the erection of interior walls or partitions receive a surface of either plaster or drywall material. The work in dispute here is the installation of metal studs which are to receive drywall material.

The Basic Facts

In connection with the construction of the Marcus J. Lawrence Memorial Hospital at Cottonwood, Arizona, general contractor Packer subcontracted the installation of metal wall studs and drywall to Gray. In connection with the construction of the new office building in Phoenix, Arizona, general contractor Southern Builders of Arizona, Inc., subcontracted the installation of metal studs and drywall to Klaas Bros., Inc. Contract specifications called for installation of nailable or screwable steel studs to be covered by drywall materials. The studs are installed by placing metal tracks on floors and ceilings, into which vertical steel studs are placed and secured in position with screws, or nails, after which the covering material is applied with either nails, screws, clips, or wires.

Employer Gray has a collective-bargaining agreement with the Lathers, and does not employ carpenters. During the early part of July 1964,[3] Gray assigned the installation of metal studs to receive drywall materials to its own employees who were represented by Lathers Local 374. In the latter part of July, representatives of Respondent Locals 1061 and 1089 met with Floyd Packer of Packer Construction Company and demanded the metal stud work which had been subcontracted to Gray, stating that Local 1061 would picket if the Lathers continued the work. No demand was made upon Gray. On or about July 29, Respondent Local 1061 began to picket the project, and all but the lathers employed by Gray left the job.

Sometime early in July, Klaas Bros., Inc., began the installation of metal studs to receive drywall materials at the Central Towers project. This was the first time that Klaas Bros., Inc., had received a contract for such work, and it began the job using two carpenters and two lathers. On or about July 30, a representative of Respond-

[3] All dates herein refer to 1964.

ent Local 1089 visited the project and spoke to Robert Campbell and William Stoll, officers of Klaas Bros., Inc. The representative told Campbell and Stoll that the Carpenters was entitled to the work pursuant to a 1960 craft agreement between Lathers Local 374 and the Central Arizona District Council of Carpenters, and that, if Klaas Bros., Inc., did not assign the work exclusively to the Carpenters, Local 1089 would have to "take action." It was pointed out to Campbell and Stoll that Local 1061 had picketed the Marcus J. Lawrence Memorial Hospital project on the same issue Klaas Bros., Inc., invited Lathers Local 374 and Carpenters Local 1089 to meet with a representative of the Arizona Building Contractors Association in an attempt to resolve the dispute. Local 1089 did not appear at the meeting, at which Lathers Local 374 informed Klaas Bros., Inc., that the 1960 agreement had been repudiated. Klaas Bros., Inc., thereupon made a written assignment of the disputed work to employees represented by Lathers Local 374, and so notified the Carpenters, in writing. On August 7, a few days after this assignment had been made, the metal stud work on the Central Towers project started again, using employees represented by Lathers Local 374 for the work. On August 10, the Carpenters began to picket the project. All employees other than the lathers employed by Klaas Bros., Inc., left the job; the lathers continued to install the metal studs.

Contention of the Parties

Respondents claim the disputed work on the basis of a 1960 agreement between Lathers Local 374 and the Central Arizona District Council of Carpenters which, assertedly, is still in effect and awards work of the type in dispute to the Carpenters. They also rely upon the 1962 Arizona master labor agreement, by which all parties to the instant case are bound, and to a limited extent upon language in a 1962 agreement between Lathers Local 374 and the Arizona Consolidated Masonry and Plastering Contractors Association. Respondents also rely upon certain decisions of the National Joint Board for Settlement of Jurisdictional Disputes, and further contend that their claim is supported by area and industry practice, and that installation of metal studding to receive drywall covering is a traditional function of carpenters.

The Lathers contends that it has repudiated the 1960 agreement relied upon by the Respondents, and that the Arizona master labor agreement does not bind the employers signatory to that agreement to any agreement between the Lathers and Carpenters. It further points out that the 1960 agreement has not been followed in the area by employers in assigning the type of work in dispute, and that the employers herein were not parties to that agreement and did not

consider themselves bound by its terms. The Lathers also relies upon area and industry practice to support its claim to the work, and contends that installation of steel studding is an integral and traditional part of the lathers trade which should be performed by lathers regardless of the type of material to be attached to the studs.

Employer Gray states that the work has been assigned to lathers because he has consistently assigned such work over the years to Lathers and because he does not employ carpenters. Employer Klaas Bros., Inc., although it does employ carpenters, and indeed began the instant job using a composite crew of lathers and carpenters to perform the work in dispute, states that it was satisfied that the 1960 agreement between the Lathers and Carpenters had been abrogated and thus assigned the work to lathers. Both Employers state that since the work of installing the floor and ceiling tracks is undisputedly the work of the lathers, it would be both more costly and more wasteful of time to assign the work of installing the metal studs to anyone other than the lathers, who are at least as capable as the carpenters of performing the job; and further state that their collective-bargaining agreements with the Lathers require the assignment of the work to that union. Employer Gray further points out that, since he employs no carpenters, it would be most inefficient to replace the lathers for only one part of an integral operation, as the disputed work is intermittent and the lathers on the job can perform the work when not otherwise occupied.

Applicability of the Statute

Charges herein allege violations of Section 8(b)(4)(D) of the Act. The record shows, and Respondents do not deny, that, on or about July 29, after Employer Gray had begun the installation of metal studs using the lathers, and after General Contractor Packer had refused to comply with demands of the Carpenters, Respondent Local 1061 began to picket the hospital project at Cottonwood with signs which read: "LATHERS UNFAIR TO AGREEMENT WITH CARPENTERS LOCAL 1061," and "PICKET CONTRACTOR GRAY PLASTERING COMPANY IN VIOLATION OF AGREEMENT. CARPENTERS LOCAL 1061." With the exception of the lathers employed by Gray, the entire job was shut down. The record further shows similarly that on or about August 10, after Employer Klaas Bros., Inc., had begun to use only lathers in the installation of metal studs, and after it had refused to comply with the demands of the Carpenters, Respondent Local 1089 began to picket the Central Towers project in Phoenix with signs which read: "PICKET CONTRACTOR

KLAAS BROS. IN VIOLATION OF AGREEMENT DISTRICT COUNCIL OF CARPENTERS." With the exception of the lathers employed by Klaas Bros., Inc., the entire job was shut down. Respondents concede, for the purposes of this proceeding, that there is reasonable cause to believe that violations of Section 8(b)(4)(D) have occurred.

We find that there is reasonable cause to believe that violations of Section 8(b)(4)(D) have occurred and that the disputes are properly before the Board for determination under Section 10(k) of the Act.

Merits of the Disputes

Section 10(k) of the Act requires the Board to make an affirmative award of the 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:* Lathers and Employers Gray and Klaas Bros., Inc., have collective-bargaining agreements covering the employees to whom the Employers have assigned the work in dispute. Respondents have no contracts with either Employer, and Employer Gray has never employed carpenters. Lathers contends that its agreements with the Employers specifically cover the work in dispute. However, the Board has heretofore considered similar contract language [4] and held that, although it refers to the installation of certain metal studs, it does not treat specifically with metal studs which are to receive a drywall covering.

2. *Company, area, and industry practice:* Although the Lathers and the Carpenters offered considerable evidence on area and industry practice, the results of their efforts are inconclusive. As Employer Gray has never employed carpenters and has used lathers exclusively for installing metal studs, the assignment of this work to the lathers is in accord with his past practice. As this was the first time that Employer Klaas Bros., Inc., was performing under a contract to install metal studs, it has no past practice. However, because the license of Klaas Bros., Inc., to do such lathing work was obtained only by virtue of having hired Robert Campbell, vice president of Klaas Bros., Inc., the Lathers noted that Campbell, who had operated his own lathing and plastering business in the Phoenix area since 1957, had without exception assigned the work of installing metal studs to receive drywall covering to lathers.

3. *Efficiency of operation:* Although it is not contended that either lathers or carpenters lack the ability to erect metal studs, the Lathers points out that it has a long apprenticeship program

[4] *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.

for training lathers to install metal studs, while the Carpenters has no such program. Respondents do not claim the right to install all steel studs to be used in the building of the projects; their demand is limited only to such steel studs as will receive a drywall covering. In addition, Respondents do not lay claim to the installation of either the floor and ceiling runners to which the studs are attached, or to the furring channels which are inserted into and across the steel studs.[5] Performance of the disputed work by Respondents would, therefore, necessitate the division of the entire operation of preparing a wall area for its finishing covering between two craft groups with one installing the runners and furring, and the other installing only the studs in each partition designed to receive drywall covering. Although the Carpenters contends that the disputed work can be performed more efficiently by carpenters because they will also be attaching the drywall covering to the studs, the record indicates that Empoyer Gray has never employed its own carpenters and that Employer Klaas Bros., Inc., has subcontracted the work of installing drywall covering. Clearly, the installation of floor and ceiling tracks, metal studs, and bracing material is more efficiently performed as a continuous, integrated operation by a single craft group. The Employer's assignments of the disputed work to lathers are therefore consistent with efficiency of operation in the erection of interior partitions and studding to receive drywall covering.

4. *Action of the Joint Board:* There are numerous decisions of the National Joint Board of Jurisdictional Disputes which tend to support the claims of each of the rival unions to the disputed work.

5. *The 1960 Agreement, Arizona Master Labor Agreement, and Arizona Consolidated Masonry and Plastering Contractors Associated Agreement:* The Respondents rely heavily upon a July 22, 1960, agreement between Central Arizona District Council of Carpenters and Lathers Local 374, which grants to the Carpenters "The installation of metal studs, nailable or non-nailable, to receive materials other than lath material and plaster. . ." The Respondents contend that this agreement, which the Lathers contends has in fact been abrogated, should be dispositive of the instant dispute. The agreement was to remain in effect until the Lathers' and Carpenters' Internationals arrived at an agreement covering the same work.

The record indicates that the International's presidents recognized the agreement for a time at least and that the Lathers International president at the time the agreement was signed, Lloyd A. Mashburn, as of June 23, 1961, instructed Local 374's representatives that the agreement was still in effect. The Lathers assert that the Carpen-

[5] These jobs are the work of the Lathers

ters' International president notified all Carpenters locals sometime in November 1962 that, by vote of its executive council on November 8, 1962, all local and district agreements previously entered into were no longer to be considered in effect. It further asserts that from at least as far back as that action by the Carpenters, the parties to the 1960 agreement have not been living up to the terms of the agreement. In any event, the record shows that Mr. Mashburn's successor, Sal Maso, notified Local 374 on June 1, 1964, that the agreement was no longer in effect.

The Carpenters contends that the agreement had not been abrogated when the disputed work began, and that, even assuming it can be abrogated simply by proclamation of one party, the Carpenters at least had not been given notice of abrogation before the assignment of the disputed work, and hence the agreement should be held to be valid and determinative of the dispute herein. Although it is not clear from the record exactly when the Lathers ceased giving effect to the 1960 agreement, or exactly when the Carpenters first received notice of abrogation, it is clear that the agreement had not been honored for some time prior to the instant dispute, since numerous instances are cited in which lathers in the Phoenix area have been performing the same work as that herein in dispute.[6]

The Carpenters contends that the Arizona master labor agreement of 1962, by which the Employers herein are bound, requires those Employers to make assignments of disputed work in accord with agreements between the parties such as the 1960 agreement herein, relying specifically on "Carpenters Working Rule No. 28." The Lathers, on the other hand, asserts that such rule does not constitute a commitment on the part of the employer-signatories to be bound by the terms of any such interunion agreement, but only an agreement that, should there be a strike against any employer who has made an assignment not in keeping with an agreement between the Carpenters and any other union, that employer shall not hold the Carpenters responsible for said strike.

The Carpenters further claims that Lathers Local 374, by its 1962 agreement with the Arizona Consolidated Masonry and Plastering Contractors Association, indirectly agreed to honor the 1960 agreement. The clause relied on in that 1962 agreement simply states that disputes between crafts affiliated with the AFL-CIO shall be settled in a manner agreeable to the unions themselves.

The 1960 agreement is only one of the factors the Board must consider in deciding who is entitled to the disputed work. In deter-

[6] Moreover, Local 1061 is not signatory to this 1960 agreement, nor is it a member of the Central Arizona District Council of Carpenters.

mining how much weight it is to be given, we note that although much of the testimony with respect to it is contradictory, it is uncontraverted that other employers in the Phoenix area have been making assignments without regard to it, and without complaint from either the Lathers or the Carpenters until this case. Moreover, none of the Employers herein was bound by the 1960 agreement.

Conclusion as to the Merits of the Disputes

Upon consideration of all pertinent factors, we shall assign the work in dispute to lathers. They are at least as skilled in the performance of the work as the carpenters who compete for it, and they have been performing it to the satisfaction of the Employers who assigned the work to them and who desire to retain them on the job. The assignment of the disputed work to the Lathers is consistent with their collective-bargaining agreements with Employers Gray and Klaas Bros., Inc., it conforms in the case of Gray, and is not inconsistent in the case of Klaas Bros., Inc., to the Employers' past practice, and it is not inconsistent with area prcatice. The lathers are well trained for the work by virtue of their complete and specialized apprenticeship program, and the efficiency with which they may accomplish the integrated task of preparing partitions for final covering in a single operation supports their claim to the disputed work. We conclude that the Employers' 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 to the employees of Employers Gray and Klaas Bros., Inc., who are represented by the Lathers, but not to that Union or its members.[7]

[7] We find this case to be clearly distinguishable from the recently issued case in *The Walter Corporation,* 151 NLRB 741, in which we awarded to employees represented by the Carpenters work identical to that in dispute herein, despite the employer's assignment to the Lathers. However, that assignment was found to be contrary not only to past industry practice in the Little Rock, Arkansas, area, but also to the past practice of the employer, which for 3 years had been employing carpenters exclusively to perform the work. A further basis for the Board's decision in the *Walter* case was a 1961 agreement between the Carpenters and the Lathers, embracing the State of Arkansas, which awarded the disputed work to the Carpenters. Despite the contention of the Lathers that it had abrogated that agreement before the employer's assignment, the Board accorded some weight to it because most subcontractors in the Little Rock area have abided by its terms In the instant case, contrary to the *Walter* case, the assignments by the Employers of the disputed work to Lathers are in accord with signed agreements with the Lathers, are not inconsistent with either industry practice in the area or with the practice of the Employers, and the record shows that other employers in the Phoenix area have been making assignments to Lathers. As to the 1960 agreement, the record suggests that it had been abrogated by both the Carpenters and the Lathers.

DETERMINATION OF DISPUTES

Pursuant to Section 10(k) of the National Labor Relations Act, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Disputes.

1. Lathers employed by Gray Plastering Company, Inc., and by Klaas Bros., Inc., who are represented by Wood, Wire and Metal Lathers International Union, Local 374, AFL–CIO, are entitled to perform the work of erecting metal studs to receive drywall material on interior partitions in the Marcus J. Lawrence Memorial Hospital at Cottonwood, Arizona, and in the Central Towers office building in Phoenix, Arizona, respectively.

2. Central Arizona District Council of Carpenters, AFL–CIO, United Brotherhood of Carpenters and Joiners of America, Local 1061, AFL–CIO, United Brotherhood of Carpenters and Joiners of America, Local 1089, AFL–CIO, and R. E. Barrett, are not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Employers to assign the above work to carpenters.

3. Within 10 days from the date of this Decision and Determination of Disputes, Central Arizona District Council of Carpenters, AFL–CIO, United Brotherhood of Carpenters and Joiners of America, Local 1061, AFL–CIO, United Brotherhood of Carpenters and Joiners of America, Local 1089, AFL–CIO, and R. E. Barrett, shall notify the Regional Director for Region 28, in writing, whether they will or will not refrain from forcing or requiring the Employers, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to carpenters rather than lathers.

Chicago Typographical Union No. 16 *and* Alden Press, Inc.

Chicago Stereotypers Union No. 4 *and* Alden Press, Inc. *Cases Nos. 13–CC–404 and 13–CC–405. April 14, 1965*

DECISION AND ORDER

On May 19, 1964, Trial Examiner Joseph I. Nachman issued his Decision in the above-entitled cases, finding that the Respondents had engaged in certain unfair labor practices alleged in the complaint and recommending that they cease and desist therefrom and take certain affirmative action. The Trial Examiner further found that the Respondents had not engaged in certain other unfair labor practices alleged in the complaint and recommended that the complaint be dismissed with respect to the latter allega-