

The multiemployer bargaining unit heretofore found by the Board to be appropriate was described in the Decision and Direction of Election as comprising the production and maintenance employees of all members of Sewanee, but in view of the fact that Sewanee in its corporate form has dissolved since the UMW won the election, the multiemployer unit is now more accurately described as comprising the production and maintenance employees of those coal mining operators who were formerly members of Sewanee. It is accordingly recommended that the Board certify the UMW as the collective-bargaining representative of all the production and maintenance employees of coal mining operators who were formerly members of Sewanee, including those who are not now operating but who resume the business of operating coal mines at the end of the strike or before the conclusion of the strike.

Local 25, International Brotherhood of Electrical Workers, AFL-CIO and Emmett Electric Company, Inc. and Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Unions; United Construction Contractors Association, Inc.; D-Lion Construction Co., Inc., Parties in Interest. Case No. 29-CD-8 (formerly 2-CD-316). May 17, 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 Emmett Electric Company, Inc., herein called Emmett, alleging a violation of Section 8(b) (4) (D) of the Act by Local 25, International Brotherhood of Electrical Workers, AFL-CIO, herein called Local 25. A hearing was held before Hearing Officer Jacques Schurre on November 18, 1964, at which all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing upon the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. Thereafter, briefs were filed by Emmett, Local 25, and Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Unions, herein called Local 199, which the Board has duly considered.

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

1. The business of the Employer

Emmett is an electrical contractor with its place of business in Levittown, Long Island, New York. In July 1964, Emmett was engaged as an electrical subcontractor in the construction of the East End Synagogue, Long Beach, Long Island, New York, where the alleged dispute occurred.

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 Fanning and Brown].

Emmett is also a member of United Construction Contractors Association, Inc., herein called Association, an organization which bargains and executes labor agreements on a multiemployer basis on behalf of its members. One of the Association's members is Al and Jack Picoult d/b/a Jack Picoult, a New Jersey corporation with its office and place of business in Fort Lee, New Jersey. During the past 12 months, Picoult performed \$700,000 worth of business outside the State of New Jersey. In addition, Picoult has received materials valued in excess of \$50,000 at one of its jobsites in New York, New York, which were shipped from points outside the State of New York.

There is no evidence in the record to suggest that Emmett's operations considered singly would meet any of our jurisdictional requirements. However, the foregoing does establish that the Association is engaged in commerce within the meaning of the Act, based upon the interstate operations of Picoult, one of its members, and it is our practice to assert jurisdiction over an employer which would not otherwise meet our standards, if the employer is a member of an association which bargains collectively for its members and the Association is itself engaged in commerce within the meaning of the Act. Accordingly, we find that, as the Association is engaged in commerce within the meaning of the Act, it will effectuate the purposes of the Act to assert jurisdiction herein.²

2. The labor organizations involved

The parties stipulated, and we find, that Locals 25 and 199 are labor organizations within the meaning of Section 2(5) of the Act.

3. The dispute

In lieu of oral testimony, the parties³ stipulated to incorporate and make a part of the record herein, the transcript and exhibits in the Section 10(1) proceeding⁴ before the United States District Court for the Eastern District of New York which involved the same issues and parties.

The alleged dispute involves the right of Emmett to perform the electrical work connected with the construction of the East End Synagogue, Long Beach, Long Island, New York. In July 1964, D-Lion Construction Co., Inc., herein called D-Lion, as general contractor, awarded the electrical work on the East End Synagogue to Emmett.

² *Marble Polishers, Machine Operators and Helpers, Local No. 121, AFL-CIO, etc. (Miami Marble & Tile Company)*, 132 NLRB 844; *Siemens Mailing Service*, 122 NLRB 81, 84.

³ Local 199 did not enter an appearance at the hearing and hence is not a party to the stipulation.

⁴ *Ivan C. McLeod, etc. v. Local 25, International Brotherhood of Electrical Workers, AFL-CIO (64-C-1010)*.

Emmett, whose employees are represented by Local 199, began work immediately. Mario Tucci, D-Lion's job superintendent, testified that on September 14, 1964, he was visited at the jobsite by Joseph Cavanaugh, a business representative for Local 25. According to Tucci, Cavanaugh told him that the electricians working on the job were not members of Local 25, that they were not affiliated with the AFL, and that the job would probably be picketed if the electricians were not taken off. Tucci stated that Cavanaugh gave him a list of Local 25 contractors and said that if Emmett did not sign up with Local 25, one of the contractors on the list should be engaged to do the electrical work.

Cavanaugh admitted having a conversation with Tucci at the jobsite in early September 1964, at which time he asked Tucci who would be doing the electrical work. When Cavanaugh was informed that the work had been awarded to Emmett, he checked his list of Local 25 contractors and not finding Emmett listed, advised Tucci that he did not believe that Emmett had a contract with Local 25 or that Emmett was affiliated with the AFL-CIO Building Trades. Cavanaugh testified that he then suggested to Tucci that Emmett sign up with Local 25, not realizing at the time that Emmett had a collective-bargaining agreement with Local 199. Cavanaugh denied making a claim for jurisdiction over the work or that any reference was made to picketing. Cavanaugh testified further that he did not tell Tucci to change electrical contractors, but rather that he wanted Tucci to employ electricians getting the wage and fringe benefits that are received by members of Local 25 under its agreement with other contractors.⁵ Cavanaugh denied that he told Tucci that either Emmett would have to sign with Local 25 or D-Lion would have to engage a contractor on the Local 25 list. Cavanaugh admits leaving the list of Local 25 contractors with Tucci; however, he stated that his purpose was to permit D-Lion to choose one of the listed contractors, in case Emmett was a nonunion contractor or not signed up with Local 25.

Thereafter, on or about September 16, 1964, Local 25 commenced picketing at the jobsite with signs which bore the following legend:

To The Public

The Electricians on this job—Emmett Electric—do not work under wages or working conditions established by Local 25, IBEW, AFL-CIO. We do not have any dispute with any other Employer.

LOCAL 25, IBEW, AFL-CIO.

⁵ The record establishes that the wage rate for employees represented by Local 199 is substantially lower than that of Local 25 members. However, Cavanaugh admits he did not discuss wages and fringe benefits with Tucci.

As a result of the picketing, employees of certain of the subcontractors refused to cross the picket line, and work on the project was disrupted. After the picketing had continued for 10 days, D-Lion canceled its contract with Emmett and engaged M & M Electric, one of the contractors appearing on Local 25's list, to complete the unfinished electrical work. The picketing was discontinued on or about September 26, 1964, when M & M Electric first appeared on the job.

4. Contentions of the parties

Local 25 contends that no jurisdictional dispute exists because neither Local 25 nor Local 199 ever claimed the work in question. Local 25 further contends that even if the Board should find that it was in fact claiming the work, there is no evidence that it engaged in proscribed conduct within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act in furtherance of such an end, and therefore the notice of hearing must be quashed. While Local 25 admits picketing the jobsite, it claims its object in so doing was only to publicize the fact that Emmett's employees were not receiving the prevailing area wage rate and fringe benefits established by Local 25. Emmett contends that its employees are entitled to perform the disputed work because it was originally assigned to them, and that by reason of Local 25's illegal conduct D-Lion was forced to cancel its contract with Emmett and reassign the electrical work to a contractor whose employees are represented by Local 25. Local 199 did not make an appearance at either the Section 10(k) or the Section 10(1) proceeding, which was made a part of the record herein. However, in its brief filed with the Board, Local 199 contends Local 25 has engaged in conduct proscribed by Section 8(b)(4)(i) and (ii)(D) of the Act and by reason of this conduct Local 199 members have been deprived of work to which they are otherwise entitled.

All parties appear to agree that in the event the Board should make an affirmative award, it should be in favor of the employees employed by Emmett; therefore no evidence was submitted in connection with this issue.

5. Applicability of the statute

In a Section 10(k) proceeding it is necessary to determine whether there is reasonable cause to believe that a violation of Section 8(b)(4)(D) of the Act has occurred. In this instance, the dual question is presented as to whether Local 25 was in fact claiming the work in dispute and, if so, whether it engaged in illegal conduct within the meaning of Section 8(b)(4)(i) and (ii)(D) in furtherance of this object.

Local 25 argues that its sole concern was that the contractor performing the electrical work on the project paid its employees the prevailing area wage rate and fringe benefits. However, significantly enough, Cavanaugh did not discuss with Tucci the wage rate and fringe benefits of Emmett employees or, so far as the record indicates, suggest to Tucci that any differences that might exist could be resolved by Emmett's agreeing to pay its employees Local 25 scale. Rather, according to Tucci's testimony, Local 25 made it clear that the job would be picketed unless either Emmett signed up with Local 25 or D-Lion removed Emmett from the job and engaged a Local 25 contractor, apparently excluding as an alternative solution that Emmett agree to pay its employees the area wage rate.

In sum, we find on the basis of the record before us that there is reasonable cause to believe that Local 25 was claiming the work in dispute and that a jurisdictional dispute existed.⁶ Likewise on the basis of the testimony detailed in section 3, *supra*, that Local 25 threatened to picket and did picket the jobsite in order to compel D-Lion to assign the electrical work on the project to employees represented by Local 25, we conclude that there is reasonable cause to believe that Local 25 engaged in conduct violative of Section 8(b) (4) (D) and that the dispute is properly before the Board for determination under Section 10(k) of the Act.

Merits of the Dispute

As previously stated, no evidence was submitted by the parties upon which the Board could make an affirmative award of the work in dispute. Instead, the parties agreed that in the event the Board found reasonable cause to believe an unfair labor practice occurred, the work assignment should be made in favor of the employees of Emmett, who were first awarded the disputed work. Therefore, in accordance with this agreement by the parties, we shall determine the dispute by assigning the work to the electricians employed by Emmett. In making this determination, we are assigning the disputed work to the employees of the Employer who are represented by Local 199 but not to that Union or its members. In consequence we shall also determine that Local 25 was not and is not entitled, by means proscribed by Section 8(b) (4) (D) of the Act, to force or require D-Lion to assign the disputed work to its members.

⁶ We find no merit in Local 25's contention that Local 199 never claimed the disputed work and hence no jurisdictional dispute can be said to exist because of the failure to establish that two competing groups of employees are seeking the work. The work in question was originally awarded to the employees of Emmett who are represented by Local 199, and both Emmett and Local 199 take the position that these employees were deprived of work to which they were otherwise entitled by Local 25's unlawful conduct. In such circumstances, it cannot be said that the employees employed by Emmett and represented by Local 199 are not claiming the work in dispute. Cf. *Local 46, Wood, Ware and Metal Lathers International Union, AFL-CIO, etc. (Precrete, Inc.)*, 140 NLRB 1.

DETERMINATION OF DISPUTE

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

1. Employees currently represented by Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Unions, are entitled to perform all the electrical work connected with the construction of East End Synagogue, Long Beach, Long Island, New York.

2. Local 25, International Brotherhood of Electrical Workers, AFL-CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require D-Lion Construction Co., Inc., to assign the aforementioned work to a contractor employing its members.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 25, International Brotherhood of Electrical Workers, AFL-CIO, shall notify the Regional Director for Region 29, in writing, whether or not it will refrain from forcing or requiring D-Lion Construction Co., Inc., by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to employees represented by Local 25 rather than those represented by Local 199.

MEMBER FANNING, dissenting:

I would quash the notice of hearing in this proceeding for the reasons set forth in my dissenting opinion in *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (Sarrow-Suburban Electric Co., Inc., et al.)*, 152 NLRB 531.

**Local 1291, International Longshoremen's Association, AFL-CIO
and Pocahontas Steamship Company. Case No. 4-CD-119.
May 18, 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 on August 24, 1964, by Pocahontas Steamship Co. (herein called Pocahontas or the Employer). The charge alleged that Local 1291, International Longshoremen's Association, AFL-CIO (herein called ILA) had violated Section 8(b)(4)(D) of the Act by picketing to encourage the employees of Coslett and Sons, Inc. (herein called Coslett) to cease work for the purpose of forcing Pocahontas to change its assignment of the work of opening and closing hatches aboard its ships from the ships'