

## 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 the Dispute:

1. Employees engaged in installing and servicing refrigeration equipment, currently represented by International Union of Operating Engineers, Locals Nos. 6, 6A and 6B, AFL-CIO, are entitled to connect and service this equipment at the Commerce Towers Building, Kansas City, Missouri.

2. United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. & Canada, Local No. 533, AFL-CIO, is not and has not been lawfully entitled to force or require Hall Refrigeration Sales and Service to assign to Operating Engineers' members the work of connecting and servicing refrigeration equipment.

3. Within 10 days from the date of this Decision and Determination of Dispute, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. & Canada, Local No. 533, AFL-CIO, shall notify the Regional Director for Region 17, in writing, whether or not it will refrain from forcing or requiring Hall Refrigeration Sales and Service by means proscribed by Section 8(b) (4) (D) to assign the work in dispute to its members rather than to the employees of Hall Refrigeration Sales and Service represented by Operating Engineers.

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**Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO and Midwest Homes, Inc. Case No. 25-CD-53. July 1, 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 Midwest Homes, Inc., herein called Midwest or the Company, alleging that Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, herein called Local 157 or Respondent, had violated Section 8(b) (4) (D) of the Act. Pursuant to notice a hearing was held before Hearing Officer William B. Kenney on April 29, 1965. The Company, Local 157, and Local 3010, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called Local 3010, appeared at the

hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing upon the issues.<sup>1</sup> The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. None of the parties filed briefs.

Pursuant to the provisions of 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 this case, the Board makes the following findings:

#### I. THE BUSINESS OF THE COMPANY

The parties stipulated that the Company, an Indiana corporation doing business in Carlisle, Indiana, in 1964 manufactured and shipped to States of the United States, other than Indiana, goods valued at more than \$50,000 and received goods shipped from other States valued at more than \$50,000. 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 policies of the Act to assert jurisdiction herein.

#### II. THE LABOR ORGANIZATIONS INVOLVED

We find that Local 157 and Local 3010 are labor organizations within the meaning of Section 2(5) of the Act.

#### III. THE DISPUTE

##### A. *The work in dispute; background facts*

The Company manufactures, on a production-line basis, and sells prefabricated residential, commercial, institutional, and other types of building units. These units, in sections, are sold throughout the United States to "customer builders" who, in turn, through subcontractors, erect the buildings, connect and install all plumbing, electrical, and other fixtures, prepare foundations, and otherwise perform all work required for the erection of the building. The Company employs about 115 men in its plant production work, including two experienced plumbers who spend an average of 3 hours a day in "rough-in" plumbing work, installing wall vents and certain built-in plumbing fixtures such as concealed water lines. Their work averages about 10 percent of the total plumbing work for the completed building as finally

<sup>1</sup> Early in the hearing, Local 157 withdrew from participation after denial of its motion to adjourn the hearing until after June 2, 1965, the motion being made on the grounds that the matter here in issue had been referred to the National Joint Board for Settlement of Jurisdictional Disputes. Local 157 contended that further proceedings were inappropriate under Section 10(k) pending final action by the Joint Board. The record demonstrates, however, that Midwest has not agreed to be bound by decisions of the National Joint Board.

erected. The two plant plumbers spend the remainder of their time on wall jigs, building side walls, setting panels, roofing, masking, or performing other necessary fabricating tasks of a skilled nature in the construction of the building units. The plant plumbers are classed as skilled workmen, the highest labor grade classification in the plant.

The Company and Local 3010 have a collective-bargaining agreement covering all employees, including the two plumbers, at the Company's Carlisle plant. It is in the second year of a 3-year term. This is the second 3-year agreement between the two parties. Prior to the first agreement, the employees were represented by an independent union.

The Company, as a condition to the sale of its units, requires that all onsite installation and erection work be done by building trades union contractors or subcontractors. In the past, Local 157 has thus represented plumbers engaged in the traditional type of plumbing installations on the Company's units erected within Local 157's territorial jurisdiction which embraces all of Sullivan County wherein the Company's Carlisle plant is located.

In late 1962 or early 1963, in a meeting with representatives of the Company and Local 3010, Grover Osborn, Respondent's business manager, demanded that the plumbing work in the Company's plant be assigned to Local 157 plumbers. The demand was refused because of the agreement between the Company and Local 3010. Nothing further was done at the time by any of the parties involved.

About a year later, Modern Housing Facilities, Inc., herein called MHF, one of the Company's "customer builders," purchased the component units for a nursing home to be erected by MHF near Sullivan, Indiana. In January 1965, MHF, in accordance with the usual practice, let the plumbing subcontract to Roach Plumbing and Heating Company at Vincennes which is in the territorial jurisdiction of Plumbers Local 136 of Evansville, Indiana. Roach Plumbing is a partnership of Merle Roach and his twin brother Burel Roach, both of whom are members of Local 136.

Before beginning work on the nursing home job, Roach was required to obtain clearance from Local 157. Such clearance was furnished; and, at the same time, Local 157 gave a permit card to a third Roach brother, a nonunion plumber. Work then started and continued through March 5, 1965. On that day Richard Allison, president of MHF, and Howard McKinley, president of Midwest, were told by Local 157's business agent, Mansard, that the Sullivan job would be shut down unless the plumbing work done at the Company's Carlisle plant was given to Local 157 plumbers. On Monday, March 8, Gesho, one of the plumbers working at the site, who was a member of Local 157, began picketing, carrying a sandwich board sign reading "UNFAIR TO PLUMBERS AND PIPEFITTERS LOCAL 157."

Upon being notified of the picketing, Midwest's President McKinley went to the jobsite and asked Gesho what the trouble was. Gesho said "There is no trouble here." Asked why he was picketing he said, "Well you are unfair." Asked in what way, Gesho merely pointed to the sign. Later that day President McKinley again talked with Gesho and was told, "You know what's wrong. You don't have any Local 157 members in your plant and our instruction is from Osborn that we do no more work here as far as plumbers is concerned." President McKinley then called Osborn of Local 157, and received substantially the same explanation. Some weeks later, the picket sign was altered by the addition in hand lettering of "ROACH BROS." above the legend. Burel Roach testified that at no time had Local 157 complained to his company or found any fault with its performance under its plumbing contract. Nor had he been informed of any failure to abide by union rules or of any breach of his agreement with Local 157.

No work was performed at the building site on March 8 but the following day all craft workers, except the plumbers, crossed the picket line and the work proceeded. The picketing was still in progress on April 29, the date of the hearing, but because of it, completion of the building was seriously delayed and the costs materially increased.

### *B. Contention of the parties*

Local 3010 and Midwest rely on their contract. Local 157 contends that the work in dispute is that of plumbers.<sup>2</sup>

### *C. Applicability of the statute*

We find that there is reasonable cause to believe, from the record before us, that the action of Local 157 in picketing the Sullivan Nursing Home project, which caused the stoppage of all plumbing work there, was undertaken in an attempt to force Midwest to assign to Local 157's members the plumbing work performed in the Company's plant at Carlisle, in violation of Section 8(b)(4)(D) of the Act. Accordingly, this dispute is properly before the Board for determination.

### *D. Merits of the dispute*

Section 10(k) of the Act requires that the Board make an affirmative award of disputed work after giving due consideration to the various relevant factors.<sup>3</sup> In this case the factors discussed below are determinative.

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<sup>2</sup> We make this finding despite the fact that the Respondent, prior to walking out of the hearing, asserted it was not claiming the work found herein to be in dispute.

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

### 1. Collective-bargaining agreement

Local 3010 and the Company are parties to a current collective-bargaining agreement, which is now in the second year of a 3-year term. This is the second 3-year agreement executed by the parties and, like its predecessor, confers exclusive bargaining representation rights on Local 3010 "for all the employees of the Company," described as including "all production and maintenance employees, watchmen, watchmen-janitors and working foremen." Its validity is uncontested. Clearly it covers the plant's two plumbers. Local 157 has furnished no evidence or arguments in support of its demand and has failed to show any reason why the Company's present contract with Local 3010 should not cover the two plant plumbers.

### 2. Efficiency of operation

The contract with Local 3010, in recognition of the Company's manufacturing methods, permits production employees to perform a variety of tasks not necessarily related to their particular crafts. Thus, according to the Company and Local 3010, it encourages the most efficient utilization of manpower. As above noted, the plant plumbers perform other work a majority of the time. There is nothing in the record to indicate what the precise status of the two plumbers would be if Local 157's demands were accepted. It is not known whether they would be permitted to perform other tasks.

### 3. Other considerations

Other factors usually considered by the Board in cases involving jurisdiction have no application here. The practice of other prefabricated building manufacturers in the employment and recognition of various craftsmen in their plants has not been shown. There have been no allegations or evidence concerning comparative work skills.

Based upon the entire record and after full consideration of all relevant factors involved, we shall resolve the issue here by awarding all plumbing work on prefabricated building units manufactured by the Company at its Carlisle plant to employees there represented by Local 3010 but not to that union or to its members. This determination is limited to the particular controversy giving rise to this dispute.

## DETERMINATION OF DISPUTE

Upon the basis of the foregoing findings, and upon the entire record in this proceeding, the Board makes the following Determination of Dispute, pursuant to Section 10(k) of the Act:

1. Plumbers employed by the Midwest Homes, Inc., who are represented by Local 3010, United Brotherhood of Carpenters and Joiners

of America, AFL-CIO, are entitled to perform all plumbing work on prefabricated building units manufactured by Midwest Homes, Inc., in its plant at Carlisle, Indiana.

2. Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, is not entitled to force or require Midwest Homes, Inc., its successors or assigns, to assign any of the above work to employees represented by such union.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, shall notify the Regional Director for Region 25, in writing, whether it will or will not refrain from forcing or requiring Midwest Homes, Inc., its successors or assigns, by means prescribed by Section 8(b)(4)(D) of the Act, to assign the above-described work to employees of such Company represented by such Union.

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**The Wood, Wire and Metal Lathers International Union, Local Union No. 68, AFL-CIO and State Lathing Co., Inc., and Dry-Wall Steel Erectors, Inc.<sup>1</sup> and Carpenters District Council of Denver and Vicinity, an affiliate of United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case No. 27-CD-59. July 1, 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 State Lathing Co., Inc. and Dry-Wall Steel Erectors, Inc., herein referred to as State Lathing and Steel Erectors, respectively, or jointly as the Employer, alleging that The Wood, Wire and Metal Lathers International Union, Local Union No. 68, AFL-CIO, herein referred to as the Lathers or the Respondent, had induced and encouraged employees of State Lathing to strike for the purpose of forcing or requiring the Employer to assign particular work to members of the Respondent rather than to members of Carpenters District Council of Denver and Vicinity, an affiliate of United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein referred to as Carpenters. A hearing was held before Hearing Officer Allison E. Nutt, on February 18, 1965. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce

<sup>1</sup> For reasons stated in this Decision, we find that these corporations constitute a single employer within the meaning of Section 2(2) of the Act.