

All of our employees are free to become or remain, or refrain from becoming or remaining, members of any labor organization.

FRANKLIN ELECTRIC CO., INC ,  
Employer.

Dated\_\_\_\_\_ By\_\_\_\_\_ (Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 614 Ista Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. 534-3161.

**International Union of Operating Engineers, Local No. 428, AFL-CIO and Ets-Hokin Corporation and International Brotherhood of Electrical Workers, Local No. 769, AFL-CIO. Case No. 28-CD-50. August 31, 1965**

**DECISION AND ORDER**

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges under Section 8(b)(4)(D) of the Act by Ets-Hokin Corporation (herein called Ets-Hokin or the Employer) alleging that Local No. 428, International Union of Operating Engineers, AFL-CIO (herein called Respondent, IUOE, or Local 428), had induced and encouraged employees to cease work in order to force or require Ets-Hokin to assign the disputed work to members of IUOE rather than to members of Local 769, International Brotherhood of Electrical Workers, AFL-CIO (herein called IBEW or Local 769). A hearing was held before Hearing Officer James W. Cherry, on March 3, 4, 5, and 6, 1964. All parties who appeared at the hearing 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. Briefs were filed by the Respondent, the Employer, and Local 769, and have been duly considered.

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

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

**I. THE BUSINESS OF THE EMPLOYER**

The parties stipulated that: the Employer, Ets-Hokin Corporation, a California corporation, is engaged in the contracting business in 154 NLRB No. 53.

many States throughout the United States and particularly in the State of Arizona; it is presently engaged at the Glen Canyon Dam constructing a transmission line, powerhouse, and switchyard; and its contract at the Glen Canyon Dam with the Bureau of Reclamation exceeds \$8 million in value. 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

The parties stipulated, and we find, that both Local 428, IUOE, and Local 769, IBEW, are labor organizations within the meaning of Section 2(5) of the Act.

## III. THE DISPUTE

### A. *The work in dispute*

Ets-Hokin Corporation, which is both a general and an electrical contractor, was the successful bidder in two Government contracts: one was for the mechanical and electrical installation of equipment in a powerhouse and switchyard at Glen Canyon Dam, Page, Arizona, and the other was for the construction of a transmission line running from the powerhouse and switchyard at Page to Pinnacle Peak, Arizona. Having secured the contracts, Ets-Hokin subcontracted to Rose Construction Company, Phoenix Division (Rose-Phoenix), all the work involved in erecting steel towers for the transmission line and the framework in the switchyard.

In October 1962, Ets-Hokin arranged a prejob conference with its subcontractors and the various building trades that would be working on the project. Both Local 428, IUOE, and Local 640, IBEW,<sup>1</sup> attended. During the conference a problem was raised relative to the IBEW's claim to installation of light poles that had been placed in the switchyard. Wallace Barrett, vice president in charge of industrial relations for Ets-Hokin, stated that it was Ets-Hokin's intention that their subcontractors would work under National Joint Board for the Settlement of Jurisdictional Disputes' (herein called NJB) rules and procedures. However, he specifically refused to discuss problems dealing with the transmission line work. As to whether he also excluded the switchyard work, there is a conflict in the testimony.

As noted above, Rose-Phoenix was to erect the steel towers and framework in the switchyard. When Rose-Phoenix was removed

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<sup>1</sup> Local 769 assumed jurisdiction over the outside work of Local 640 which was both an inside and outside local. Inside work is all work performed inside a building; outside work is performed outside the building.

from the transmission line work on April 4, 1963,<sup>2</sup> the entire Rose-Phoenix subcontract was canceled and Ets-Hokin itself<sup>3</sup> took over the work. On April 9, 1963, Ets-Hokin entered into a letter of assent with Local 769 whereby it agreed to be bound by the outside agreement between Southwestern Line Construction, N.E.C.A., and IBEW. At the time Ets-Hokin signed its agreement with Local 769, it was also party to a collective-bargaining agreement with the IUOE.

Some Ets-Hokin personnel began work in the switchyard in August 1963. In the middle of September, Ets-Hokin placed an Austin-Western Hydrocrane and A-Frame truck in operation in the switchyard for the purpose of hoisting towers. In October, Ets-Hokin moved a 35-ton P & H crane into the switchyard from the transmission line. In October, Cotton Featherson, an IUOE agent, visited the jobsite and saw a truck crane that was new on the project. Featherson asked the operator of the crane if he were an operating engineer and was informed that he was.<sup>4</sup> On inquiry about his referral from the IUOE, the operator said that he had been sent out on permit from IBEW Local 769. Featherson immediately went to the Ets-Hokin office to lodge a protest with Ristine, the Ets-Hokin project manager. Ristine responded that the IUOE would handle the operation of power equipment except when the equipment was servicing IBEW crafts; then it would be handled by IBEW members. This statement was repeated by Barrett when called by Ristine. IUOE made no further demands for the work.

On October 21, 1963, the IUOE members refused to work and placed pickets at the entrance at the switchyard and powerhouse.

The IUOE, pursuant to its contract with Ets-Hokin in which Ets-Hokin had agreed to be bound by the NJB's decision in jurisdictional disputes, submitted its dispute to the NJB. Prior to that hearing, the IBEW informed the NJB that it had no jurisdiction to hear the dispute and that the IBEW would not be bound. Again at the NJB hearing, the IBEW repeated that the dispute in question related to outside construction and therefore the NJB had no jurisdiction to make an award binding on the IBEW. The NJB issued its decision determining that the equipment was to be operated by the IUOE. The IBEW objected to this resolution and refused to be bound by the award. The work assignment was not changed.

<sup>2</sup> The events surrounding this removal are the subject of our Decision in Case No. 28-CA-939, 154 NLRB 839.

<sup>3</sup> Had the contract not been canceled, Rose-Phoenix would have been doing the work with IUOE employees at the time of the dispute in the instant case.

<sup>4</sup> The operator showed Featherson an identification card indicating that he was a dues paying member of IUOE.

### B. *Applicability of the statute*

On the basis of the entire record, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has been committed and that a jurisdictional dispute exists and is properly before the Board for determination under Section 10(k) of the Act.

### C. *Contentions of the parties*

In support of its claim to the disputed work, Respondent relies on (1) the Trial Examiner's Decision in Case No. 28-CA-939; (2) the NJB award of January 4, 1964; (3) skill; and (4) company and area practice. The Employer and IBEW Local 769 claim that the work belongs to Local 769 because of (1) the Employer's assignment to Local 769, (2) company and area practice, (3) contract coverage, and (4) efficiency.

### D. *Merits of the dispute*

Section 10(k) of the Act requires that the Board make an affirmative award of work after giving due consideration to various relevant factors. In this case, we have considered:

#### 1. The Trial Examiner's Decision in Case No. 28-CA-939

In that case, the Trial Examiner found that the IBEW unlawfully compelled Ets-Hokin to cancel its contract with Rose-Phoenix, causing Rose-Phoenix employees to be discriminatorily discharged. He therefore recommended that Ets-Hokin reinstate Rose-Phoenix's displaced employees. Since we have reversed the Trial Examiner's Decision on this point, 154 NLRB 839, Respondent's contention that it is entitled to this work by virtue of the Trial Examiner's Decision is plainly without merit.<sup>5</sup>

#### 2. The NJB award

The IUOE contends that both Ets-Hokin and the IBEW have agreed to submit the dispute in this case to the NJB, on the basis that Local 640, by remaining silent when Company Vice President Barrett stated that all jurisdictional disputes were to be submitted to the NJB, in effect agreed thereto. However, the IBEW and Ets-Hokin dispute the fact that the IBEW agreed to be bound at the prejob conference. The IBEW recognizes the right of NJB to resolve disputes involving inside work, but not outside work. The IBEW consistently denied to NJB jurisdictional disputes over out-

<sup>5</sup> It should be noted that our decision reversing the Trial Examiner does not, in itself, amount to an award of work to the IBEW.

side work, including the operation of hoisting equipment in switchyards.<sup>6</sup> It is clear that the present dispute involves outside work. Assuming that the IUOE version of the prejob conference is correct, this still would not appear sufficient to bind IBEW, especially in view of its known rejection of the NJB on outside construction disputes. It is unreasonable to infer that the IBEW's silence amounted to acquiescence or misled the other unions. Consequently the NJB decision is not a controlling factor in assigning the disputed work.

### 3. Skills

Both the IBEW and the IUOE contend that the disputed work involves skills unique to their respective trades. The record indicates that the employees represented by each of the competing unions have the skill necessary to operate the equipment. Both have operated equipment similar to the equipment in dispute. Although the IUOE claims for its members greater skill in operating complicated equipment, this generalization has not been shown to be applicable to the equipment in dispute. In any event, it appears that IBEW members perform the work to the Employer's satisfaction. In these circumstances the factor of skill to do the disputed work appears to favor neither union.

### 4. Contracts

The Employer has collective-bargaining agreements with both unions. Both contracts refer to construction work and the language of each could be construed to cover the disputed work.<sup>7</sup> Neither contract covers the use of the cranes under the particular circumstances involved in this case. Accordingly, the factor of contract favors neither union.

<sup>6</sup> *Local Union 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric Company)*, 137 NLRB 1425; and *Local Union No. 181, International Union of Operating Engineers, AFL-CIO (Service Electric Company)*, 146 NLRB 483.

<sup>7</sup> A. The IBEW's contract:

Section (5) equipment used to move, raise or place material commonly used in the outside branch of the electrical industry shall be performed by workmen under their agreement.

Section 3(a) (Classification). Cranes in the setting of steel transmission towers and poles and any other equipment in the line construction industry.

Section (2) Steel of metal structures used for other purpose of carrying electrical wires, conductors, or equipment (this includes transmission towers, outdoor substations, switch racks or similar electrical structures, the moving of men, tools or equipment . . .).

B. The IUOE contract:

Art. III (A and B) (work covered) the operation . . . of all equipment . . . used in connection with the performance of electrical transmission lines and conduits.

(c) The parties . . . to assume that all . . . projects (including electrical transmission lines and substations) shall specify the prevailing rates of pay.

(p. 42) Cranes Operator—both crawler and pneumatic type.

### 5. Efficiency

Ets-Hokin contends that the assignment was motivated by good business judgment and that efficiency dictates that the disputed work be done by the IBEW. It argues that the 5-mile distance between the switchyard and the powerhouse make it economically unfeasible to operate the hoisting equipment in the powerhouse and in the switchyard interchangeably, and that since the hoisting was done sporadically, if the work were assigned to the IUOE, the members of that organization would have to stand around idle because there was no other work for them to do. On the other hand, in this connection the record shows that the various pieces of hoisting equipment, with the exception of the 35-ton P & H crane, were being used interchangeably between the powerhouse and the switchyard and that the IUOE transferred the equipment. Also, there was hoisting work to be done at the switchyard other than in connection with the erection of the switchyard, and there is some evidence, although not very clear, that this may have been done by IUOE. While the factor of efficiency of operation does not appear to support either union, the Employer's assignment of the disputed work to the IBEW is consistent with the efficiency.

### 6. Area, industry, and company practice

Although there is considerable evidence as to area, industry, and company practice, it is inconclusive. The IUOE operates all hoisting equipment in general building construction in Arizona while the IBEW operates this equipment when it is used by an electrical contractor. Where a powerhouse and a switchyard are constructed by a general contractor, the hoisting equipment in the switchyard is usually operated by the IUOE, but where a switchyard alone, or together with a transmission line, is being built, electrical contractors using IBEW employees usually do the work. The record does not disclose other instances where one contractor constructed a powerhouse, switchyard, and transmission line, or where the contractor was both a general and an electrical contractor. Thus it is clear that the IUOE has not established by significant practice which favors its claim to the work.

Upon consideration of all pertinent factors and the entire record, we shall not disturb the Employer's assignment of the disputed work to the persons referred by Local 769, IBEW. The Employer is satisfied with the results achieved by its assignment and desires no change. No other factors have been established that outweigh this. In the circumstances, we shall determine the existing dispute

by assigning the disputed work to employees presently referred by Local 769, IBEW. In making this assignment, we are not assigning the disputed work to Local 769, IBEW or its members.

### 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 proceedings, the National Labor Relations Board hereby makes the following Determination of Dispute.

1. Persons referred by International Brotherhood of Electrical Workers, Local No. 769, AFL-CIO, are entitled to the work of operating hoisting equipment in the switchyard at Glen Canyon Dam performed by their Employer, Ets-Hokin Corporation.

2. International Union of Operating Engineers, Local No. 428, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) to force or require Ets-Hokin Corporation to assign the disputed work to persons referred by it.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Union of Operating Engineers, Local No. 428, AFL-CIO, shall notify the Regional Director for Region 28, in writing, whether or not it will refrain from forcing or requiring Ets-Hokin Corporation by means proscribed by Section 8(b)(4)(D) to assign the work in dispute to persons referred by it.

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**Gebhardt-Vogel Tanning Company and Dossie Jones, Petitioner and Leather Workers Union, Local 47, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO.**  
*Case No. 30-RD-12. August 31, 1965*

### DECISION AND ORDER QUASHING NOTICE OF HEARING AND DISMISSING PETITION

On July 9, 1963, the Union was duly certified (in Case No. 13-RC-9347)<sup>1</sup> as the statutory representative of a certain appropriate unit of the Employer's employees.

On July 28, 1964, the present decertification petition was filed under Section 9(c)(1) of the National Labor Relations Act, as amended, in substance alleging that the Union was no longer the statutory representative of the said employees, and requesting an election to prove the allegation.

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<sup>1</sup>At that time, the area was served by Region 13 (Chicago, Illinois). The area is now served by Region 30 (Milwaukee, Wisconsin).