International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, Local Union No. 101 *and* Metropolitan-Gill-Tecon, a Joint Venture [1] *and* Colorado Laborers' District Council, affiliated with the International Hod Carriers, Building and Common Laborers' Union of America, AFL–CIO. *Case No. 27–CD–67. December 28, 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 Metropolitan-Gill-Tecon, hereinafter called the Company or Employer, alleging that International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, Local Union No. 101, hereinafter called the Respondent, had violated Section 8(b)(4)(D) of the Act by inducing or encouraging employees of the Company to assign the work in dispute to employees who are members of the Respondent rather than to employees who are represented by Colorado Laborers' District Council, affiliated with the International Hod Carriers, Building and Common Laborers' Union of America, AFL–CIO, hereinafter called the Laborers. A hearing was held before Hearing Officer Allison E. Nutt on September 21, 1965. 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. Thereafter, Respondent filed a brief, and the Company and the Laborers filed a joint brief. Upon the entire record in the case, the National Labor Relations Board [2] makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The Employer, a joint venture composed of Metropolitan Paving Co., Inc., and Gill Construction Co., both of Oklahoma City, Oklahoma, and Tecon Corporation of Dallas, Texas, is engaged in the business of heavy construction at Buena Vista, Colorado. In the operation of its business in Colorado during the past 12 months, it received goods and materials valued at more than $50,000 directly from points outside the State of Colorado. We find that the Employer 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.

[1] The name of the Employer appears as amended at the hearing.

[2] 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 Jenkins].

II. THE LABOR ORGANIZATION INVOLVED

Respondent and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The work in issue*

The work in dispute is the unloading, handling, fitting, and welding of steel pipe which is an integral part of the installation of a pipeline to carry water to the cities of Aurora and Colorado Springs, Colorado.

B. *The basic facts*

The Company was formed to construct a water transmission line for the cities of Aurora and Colorado Springs, Colorado, which construction is known as the Homestake project. The pipeline to be constructed by the Company is approximately 50 miles long, of which some 43 miles is concrete pipe and 7 miles steel pipe. The latter is to be laid in 12 intermittent segments which vary in length from approximately 100 feet to several miles. The sections of concrete and steel pipe to be used in the project are manufactured for installation at specific locations and cannot be interchanged.

During the summer of 1964, following its receipt of a work order for construction of the pipeline, the Company held a series of meetings with representatives of the Laborers, Teamsters, Operating Engineers, and Carpenters Unions for the purpose of executing a statewide form of Heavy and Highway Agreement which would cover work on the Homestake project. It was agreed that all work on the project would be performed by those four unions. Originally, the Laborers was to perform all rigging, handling, and fitting of steel pipe, while the welding of steel pipe was to be performed by the Operating Engineers. Subsequently, the Operating Engineers withdrew its claim for the welding, and that work was then reassigned to the Laborers. In October 1964, Respondent's International Representative Johnson indicated in a letter to the Company that his union claimed the disputed work. Following the Company's refusal to discuss assignment of the work, Respondent referred the dispute to the National Joint Board for the Settlement of Jurisdictional Disputes in the Building and Construction Industry. Thereafter, the Company notified the Joint Board that neither it nor the Laborers recognized the Joint Board and that neither would abide by any decision it issued. On January 7, 1965, the Joint Board awarded the disputed work to Respondent.

217-919—66—vol. 156——28

Following several unsuccessful attempts by the parties to resolve the dispute, Respondent picketed the jobsite on July 26 and 27 and again on August 17 and 18. On both occasions, the picketing caused a shutdown of the project. The picket signs stated as follows:

> Notice to Public: MGT refuses to comply with National Joint Board decision, Boilermakers Local 101.

C. *Applicability of the statute*

Before the Board proceeds with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. As previously described, the record demonstrates that Respondent picketed the jobsite on two separate occasions, thereby successfully inducing work stoppages, for the purpose of forcing the Company to assign the work in dispute to Respondent instead of to the Laborers. Accordingly, we find, on the entire record, that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, and that the work dispute is properly before the Board for determination under Section 10(k) of the Act.

D. *Contentions of the parties*

In support of its claim to the disputed work, Respondent relies upon the decision of the National Joint Board, and upon State and national practice showing that it has performed similar work in the past.

The Employer and Laborers contend that the assignment of work to the latter is supported by the contract between those parties, as supplemented by the mutual understanding between the Company and the four contracting unions on the project, efficiency and economy of operations, and the sufficient skills of laborers to perform the work. They further contend that there is no relevant practice of any kind supporting the claim of Respondent.

E. *Merits of the dispute*

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 pertinent to the issue of the work assignment in the instant case:

1. Collective-bargaining agreements

At all times material herein the Laborers and the Company were parties to a collective-bargaining agreement covering the employees to whom the Company assigned the work in dispute, and describing as among the work to be performed by such employees the construction

of "Water Supply Propects" and "Pipelines." On the other hand, the Company has no contract with Respondent and employs no boilermakers.

2. Works and skills involved

The record reveals that the work in dispute is primarily unskilled and that no skills peculiar to boilermakers are involved. To the contrary, laborers have performed the disputed work to the satisfaction of both the Company and the Bechtel Corporation, which is inspecting the project for the cities of Aurora and Colorado Springs. We find, therefore, that the Employer's assignment of the work to laborers is consistent with the skills involved.

3. Efficiency of operations

Although employees represented by both unions can perform the disputed work, the integrated nature of all phases of the work on both concrete and steel pipe requires that the various operations involved be closely coordinated. As previously noted, laborers are presently performing without dispute all work on concrete pipe. Respondent claims only work on the steel pipe, the granting of which would unduly fragmentize the work tasks on the project. Since, as noted previously, the various sections of concrete and steel pipe are manufactured for installation at specific locations and cannot be interchanged, the efficiency inherent in the laborers' performance of the disputed work lies in the fact that they, unlike boilermakers, can work on concrete pipe sections at those locations where none of the 12 sections of steel pipe is involved, and thus function continuously on the entire length of the construction project. Also, an award of the work on steel pipe to Respondent may result in the necessity of hiring a boilermaker foreman in addition to the present laborer foreman for each crew, an arrangement which would result in unnecessary costs to the Company and a likely division of authority within the crews. Therefore, since the work involved can be performed more efficiently when done as a continuous, integrated operation by a single employee group, we find that the Company's assignment of the disputed work to laborers is consistent with the efficiency of its operations.[3]

4. Company, area, and industry practice

The Company, having been created as a joint venture for the purpose of constructing the pipeline involved herein, has no separate past practice with respect to the disputed work. Although Respondent

[3] See in this regard *Local 690, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (Pipe Linings, Inc.)*, 150 NLRB 496.

introduced evidence indicating that it has performed the welding of steel pipe for employers within the State of Colorado and elsewhere, it was admitted that, on all such jobs, only steel pipe was involved. The Company argues, and we agree, that it is significant that Respondent has failed to show that it has performed the disputed work on projects involving, as here, the intermittent installation of both steel and concrete pipe. Therefore, since the evidence introduced by Respondent does not relate to projects fully comparable to that involved herein, the Board finds that these factors do not support either party.

5. Joint Board award

Respondent relies upon the Joint Board decision of January 5, 1965, awarding the disputed work to it, and contends that this award should determine the dispute before us. However, the Employer was not a party to an agreement that would bind it to accept awards of the Joint Board, and it did not participate in the Joint Board proceeding upon which Respondent relies. Under these circumstances, the Joint Board award is merely one of the factors to be considered in making our determination.[4] Although we have considered the Joint Board award as a relevant factor, we find that it sheds little light on the determination we must make because it discloses no reasoned basis for the conclusion it reaches.

Conclusions as to the Merits of the Dispute

Upon consideration of all pertinent factors appearing in the record, we shall assign the disputed work to the Laborers, principally on the basis of their collective-bargaining agreement with the Company, the efficiency with which the laborers can accomplish the integrated work tasks involved, their ability to perform the disputed work, and the assignment of the Employer. We shall, accordingly, determine the instant jurisdictional dispute by deciding that laborers, rather than boilermakers, are entitled to the work in dispute. In making this determination, we are assigning the work to employees who are represented by the Laborers but not to that Union 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 proceeding, the National Labor Relations Board makes the following Determination of Dispute.

[4] *Local 690, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, etc., supra.*

1. The laborers currently employed by Metropolitan-Gill-Tecon who are represented by Colorado Laborers' District Council, affiliated with the International Hod Carriers, Building and Common Laborers' Union of America, AFL–CIO, are entitled to perform the disputed work of unloading, handling, fitting, and welding of steel pipe being installed by Metropolitan-Gill-Tecon on the Homestake project at Buena Vista, Colorado.

2. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, Local Union No. 101, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Company to assign the above-described disputed work to boilermakers.

3. Within 10 days of the date of this Decision and Determination of Dispute, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, Local Union No. 101, shall notify the Regional Director for Region 27, in writing, whether it will refrain from forcing or requiring the Company, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to boilermakers rather than laborers.

Texas Industries, Inc. *and* Dallas General Drivers, Warehousemen & Helpers, Local No. 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. *Case No. 16–CA–2130. December 29, 1965*

DECISION AND ORDER

On June 8, 1965, Trial Examiner Maurice S. Bush issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision with a supporting brief.

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 Fanning and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial