

Local 804, Delivery and Warehouse Employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Gimbel Brothers, Inc. and Joseph Eletto Transfer, Inc. and Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 29-CD-49

November 15, 1967

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND ZAGORIA

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Gimbel Brothers, Inc., under Section 8(b)(4)(D). The charges allege, in substance, that Local 804, Delivery and Warehouse Employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, induced and encouraged employees to strike, or refuse to perform services; and threatened, restrained, and coerced Gimbel Brothers, Inc., with an object of forcing or requiring Joseph Eletto Transfer, Inc., an employer, to assign particular work to Local 804, rather than to Local 814, also affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Pursuant to notice, a hearing was held before Joan Zweifel, Hearing Officer, on August 8 and 11, 1967. 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.

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.

The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. Local 814, Teamsters, filed a brief, which has been duly considered.

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

I. THE BUSINESS OF THE COMPANIES

The parties stipulated, and we find, as follows:

Gimbel Brothers, Inc.,¹ is a retail department store in the New York City metropolitan area. Its principal office and place of business is in New York City, and it operates a distribution warehouse in Long Island City, New York. During the past year, Gimbel's, in the course of its business opera-

tions, derived in excess of \$500,000 in gross revenues, and purchased goods, supplies, and commodities worth in excess of \$50,000 directly from suppliers located outside the State of New York; during the same period, Gimbel's shipped directly to customers located outside the State of New York goods, supplies, and commodities worth in excess of \$50,000.

Joseph Eletto Transfer, Inc.,² performs trucking services, and maintains its principal office and place of business in Valley Stream, Long Island, New York. During the past year, Eletto, in the course and conduct of its business operations, performed services worth in excess of \$50,000 directly to points located outside the State of New York.

We find, in accordance with the stipulation of the parties, that Gimbel's and Eletto are employers 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

The parties stipulated, and we find, that Local 804, Delivery and Warehouse Employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,³ and Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,⁴ are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Dispute*

The disputed work which gave rise to this proceeding concerns the delivery of furniture and bulk merchandise, and the incidental work of binning and sorting same, at Gimbel's New York division warehouse in Long Island City.

B. *The Facts*

As noted above, Gimbel's operates a distribution warehouse in Long Island City. For a number of years prior to July 1, 1967, Gimbel's contracted with United Parcel Service for the delivery of furniture and bulk merchandise from, and the incidental work of binning and sorting at, its warehouse. United Parcel's employees were represented by Local 804. It also appears that, prior to July 1, 1967, Gimbel's had a contract with Eletto, under which Eletto transported furniture and bulk merchandise between Gimbel's stores and the warehouse, and made deliveries to model homes and to customers on an emergency basis. Eletto's

¹ Hereinafter called Gimbel's

² Hereinafter called Eletto

³ Hereinafter called Local 804

⁴ Hereinafter called Local 814

employees, about eight in number, were represented by Local 814.

In April 1967,⁵ Gimbel's notified United Parcel Service that Eletto would be the major delivery contractor as of July 1. A few days later, Local 804's president, Thomas Simcox, advised Gimbel's that Eletto would have to negotiate a contract with Local 804; that Local 804 had the furniture delivery domain for department stores in the metropolitan New York City area; and that Local 814 was not qualified, or "eligible" to do the work. Thereafter, in June, Simcox called Gimbel's and advised that if Eletto did not affiliate with Local 804, he (Simcox) would get in touch with the other unions which represent Gimbel's employees and "surround the store." Simcox advised Eletto directly that unless Eletto had a contract with Local 804, "there would be no Eletto trucks going out of Gimbel's warehouse"; at the same time, Simcox told Eletto its contract with Local 814 was "no good." On June 26, Local 804 picketed several Gimbel locations, including the warehouse, with signs stating "Gimbel's unfair to Local 804, affiliated with the International Brotherhood of Teamsters." On Monday, July 3, Eletto employees began making Gimbel deliveries. Local 804 again picketed on July 17, with the same picket sign legend hereinbefore described, and as a result, a number of truckdrivers delivering merchandise to Gimbel's warehouse and stores refused to cross the picket lines.

C. Contentions of the Parties

At the hearing, Local 804 claimed it was entitled to the disputed work on the basis that all department store furniture and bulk merchandise delivery work in New York City was within its jurisdiction. Local 814, on the other hand, claims the work as contractual representative of Eletto's employees. Gimbel's states it is neutral in the dispute, while Eletto claims that it is bound by its contract with Local 814.

D. Applicability of the Statute

Before the Board proceeds with a determination of 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 stated above, the uncontroverted record testimony establishes that Respondent Local 804 threatened to picket, and did picket, Gimbel's. It is further established that one object of this picketing, as stated by Respondent's president, Simcox, to Eletto and Gimbel's and reiterated by Simcox at the hearing, was to force or require Gimbel's and Eletto to assign particular work to members of Local 804,

rather than to members of Local 814. Accordingly, we find, on the basis of the entire record, that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) of the Act has occurred, and that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after due consideration of the various relevant factors.⁶ The following factors are relevant in determining the claims of the parties herein:

1. Certification and collective-bargaining agreements

The record reflects that there is no Board certification relative to the disputed work.

Local 804 filed no brief and, except for asserting generally that it had jurisdiction over the work, did not spell out the basis for its claim. It did, however, introduce into evidence a copy of its contract with United Parcel Service, Inc., encompassing employees of that Company "covered by the jurisdiction" of Local 804. On the other hand, Local 814 claims that its contract with Eletto, covering "chauffeurs, helpers, warehousemen, packers, polishers, finishers, Hi-Lo operators and porters," entitles it to the work.

As described previously, Gimbel's contracted with Eletto, as of July 1, 1967, to do the work in question, and Eletto assigned the work to its own employees, represented by Local 814. Local 804's contract is of no relevance to the instant proceeding, as that contract is only with United Parcel, and no one is here questioning United Parcel's assignment of any work it may have to Local 804. Neither union has a contract with Gimbel's. Local 814's contract with Eletto, though speaking only of chauffeur (driving) and warehouse work generally, appears to encompass the work here in issue. Accordingly, we find that Local 814 has a stronger contractual claim to the work than Local 804, at least insofar as Eletto's assignment is concerned.

2. Employer, area, and industry practice

The record discloses that members of both Local 804 and Local 814 have in the past performed furniture delivery work within the New York City metropolitan area. Although employees of United Parcel, represented by Local 804, had previously performed the precise work in dispute for Gimbel's, members of Local 814, employed by Eletto, had also performed work of this type for Gimbel's, such

⁵ All dates refer to 1967, unless otherwise indicated

⁶ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Co.)*, 135 NLRB 1402

as interstore delivery work, and deliveries of furniture to model homes and to customers on an emergency basis. We are unable to conclude from this record that employer, area, and industry practice favors either group of employees.

3. Relative skills and efficiency of operation

A representative of Gimbel's testified at the hearing to the effect that for several years it had expressed to United Parcel Service its dissatisfaction with the kind of service it was receiving, including the cost of that service, and its efficiency. On the other hand, Local 804 presented evidence at the hearing that members of Local 814 employed by Eletto wore no uniforms, had no helpers, and drove trucks which compared unfavorably with United Parcel trucks in maintenance and appearance. It would appear that Gimbel's is fully satisfied with Eletto's assignment of the work to members of Local 814, as evidenced by the fact that Gimbel's transferred the work from United Parcel to Eletto. We find, on the basis of the entire record, that members of Local 814, employed by Eletto, are at least as capable of performing the disputed work as are members of Local 804.

4. Action of the Joint Council of Teamsters

The record shows that Local 804 took this dispute to the Joint Council of Teamsters. However, on June 27, 1967, the Joint Council Executive Board ruled that "it could not render a decision pending the outcome of the NLRB hearings."

CONCLUSIONS AS TO THE MERITS OF THE DISPUTE

Upon consideration of all pertinent factors, we conclude that employees of Eletto, represented by Local 814, are entitled to perform the work in dispute. Employees of Eletto, represented by Local 814, are fully capable of performing the work in question, and it appears that both Gimbel's and Eletto, which assigned them the work, are satisfied with the quality of their work and the cost of employing them. Moreover, the instant assignment of the disputed work to Local 814 is consistent with the explicit provisions of the collective-bargaining

agreement between Eletto and Local 814, and with the past practice of Eletto, and is not inconsistent with area or industry practice. We conclude that Gimbel's and Eletto's assignment of the disputed work to employees represented by Local 814 should not be disturbed. We shall, accordingly, determine the existing jurisdictional dispute by deciding that Local 814, rather than Local 804, is entitled to the work in dispute. In making this determination, we are assigning the disputed work to the employees of Eletto, who are represented by Local 814, but not to that Local 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:

1. Employees employed by Joseph Eletto Transfer, Inc., who are represented by Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are entitled to the work of delivering furniture and bulk merchandise, and the incidental work of binning and sorting, at Gimbel Brothers New York Division warehouse in Long Island City, New York.

2. Local 804, Delivery and Warehouse Employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require Gimbel Brothers, Inc., or Joseph Eletto Transfer, Inc., to assign the above-described work to employees represented by it.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 804, Delivery and Warehouse Employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, shall notify the Regional Director for Region 29, in writing, whether or not it will refrain from forcing or requiring Joseph Eletto Transfer, Inc., and Gimbel Brothers, Inc., by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to employees represented by Local 804, rather than to employees of Joseph Eletto Transfer, Inc., represented by Local 814.