

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Plumbers & Steam Fitters Local No. 412, AFL-CIO¹ and The Zia Company² and International Union of Operating Engineers, Local 953, AFL-CIO.³ Case 28-CD-82

November 27, 1967

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

This is a proceeding pursuant to Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by the Zia Company, alleging a violation of Section 8(b)(4)(D) of the Act by the Pipefitters. The charge alleges, in substance, that the Pipefitters threatened, coerced, and restrained the Employer, and induced and encouraged employees to cease work, with an object of forcing or requiring the Employer to assign particular work to employees represented by the Pipefitters rather than to employees represented by the Engineers. Pursuant to notice, a hearing was held before Hearing Officer William T. George, Jr., on July 5, 1967.⁴ Thereafter, the Employer filed a 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.

All parties were represented 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. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed.

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

I. THE BUSINESS OF THE EMPLOYER

The Zia Company, which has its principal office in Albuquerque, New Mexico, is engaged, under contract with the National Aeronautical and Space Administration (NASA), in performing maintenance and technical support work at NASA's White Sands Test Facility. During the calendar year immediately preceding the hearing, the Employer purchased, from various points located outside the State of New Mexico, goods and materials valued in excess of \$50,000, which were shipped to White Sands. The parties stipulated, and we find, that The Zia Company is engaged in commerce within the meaning of the Act, and that it will effec-

uate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Pipefitters and the Engineers 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 replacement of flex lines, and some existing hard lines, on the steam modules of the altitude simulation system located at the Employer's White Sands Test Facility.

B. *The Basic Facts*

Since approximately 1946, the Employer has had contracts with both the Pipefitters and the Engineers, and has recognized those Unions as representatives of its employees classified as pipefitters and engineers, respectively. In connection with its work at White Sands, as well as at other projects, the Employer has used varying types of steampowered generating engines. The parties are substantially in agreement, however, that the engine or module involved in this dispute, while identical in function to other steampowered generating engines, and employing the same principle of generation, is unique, at least in this Employer's operations, in its application of that principle, through the physical design of the engine.

The particular generating unit of the altitude simulation system here involved consists of three engines or generators, connected to a common system of steampipes called a plenum. The plenum is so constructed that more than three engines can be used in the system. At White Sands the Employer has two "spare" engines.

As this generating system was unique and new, numerous changes in the connecting lines from the engines to the plenum, and from the engines to the control and pressure valves, were made over a period of time. In fact, in contemplation of such changes, certain connecting lines had been originally installed as "flex" lines. During the early days of the use of this generating system, it was necessary to change the position of many of the flex lines, and also to reposition many of the "hard" lines. When the system was finally smoothed out, NASA asked that the flex lines be replaced with hard lines, and that the existing hard lines be checked for proper fit and shape and, wherever necessary or advisable, replaced.

¹ Herein called the Pipefitters

² Herein called Zia or the Employer.

³ Herein called the Engineers.

⁴ All dates herein refer to 1967

With NASA's request in mind, the Employer issued a "work order," specifying which lines were to be replaced. The work was assigned to engineers. The Pipefitters immediately protested. The Engineers filed a charge with the Board, alleging a violation of Section 8(b)(4)(D) of the Act by the Pipefitters. On January 5, the Employer met with the Engineers and Pipefitters, gave its reasons for choosing engineers, but asked the two Unions to try to settle the dispute. On January 16, the Pipefitters walked off the job. D. S. Estes, head of the Employer's labor relations department, testified that he called the Pipefitters' headquarters, and was told by Business Manager Sanders that he had not been informed of the walkout, but he expected the men wouldn't be back until "they get all this pipe work back." On January 19, the Employer filed the charge that initiated this proceeding. The Employees returned to the job on January 19 or 20.

On January 25, the presidents of the Engineers' and Pipefitters' Internationals met. The Engineers thereafter informed the Regional Director for Region 28 that the Pipefitters "recognized . . . jurisdiction" of the Engineers at White Sands, and asked that its charge be withdrawn. The Regional Director granted the request, but, after investigation, issued notice of hearing on the instant charge. There was no picketing, and the job appears to have been completed.⁵

C. Contentions of the Parties

The Engineers argues that engineers are entitled to perform the work because the Employer has assigned it to them and has been satisfied with their performance; it is more economical to employ them for the work; the work is in the nature of maintenance, which is their work under the terms of its contract with the Employer; they have always performed work of a similar nature on other types of generating systems; and they performed work identical to that here in question, on this very system, for several weeks without protest by the Pipefitters.

The Pipefitters admits that all routine maintenance and all ordinary maintenance necessary for the continued operation of the generating system, or any one of its engines, is engineers' work. It argues, however, that the work here in dispute is clearly not "routine" or "ordinary" maintenance, but is in fact a complete repiping of the generating system. It argues that it has always been entitled to piping, repiping, and rebuilding or extraordinary repair of piping systems that feed the steam to this and related generating systems. It points out that pipefitters installed the pipes here being replaced. It never has claimed the adjustment, readjustment,

or replacement of a given pipe or pipes necessary to allow an engine to remain in operation without shut-down. It urges that the Board accept what it argues is a longstanding and well-understood distinction in the Employer's work assignments. Where a repair is made without issuance of a work order, the work is conceded to be engineers' work; where a specific work order is issued, where the repair is called "capital," or calls for a "configuration change," then the work is understood to be pipefitters' work. There was a "configuration change" work order issued on the job in question, thus making the work "capital." Thus, the Pipefitters argues, engineers had not been performing the work without protest, as the work it had been doing on this system, as well as the related systems it refers to, was routine and necessary maintenance. Further, it points to its contract, which grants it all work under its "craft jurisdiction."

The Employer agrees with the Pipefitters, but would add that its choice of engineers was, in any event, made in good faith, was more logical economically, and was not out of keeping with its contracts with either of the Unions.

D. Applicability of the Statute

The charge herein alleges a violation of Section 8(b)(4)(D) of the Act. The record shows that the Pipefitters demanded the work after the Employer had assigned it to engineers, and that all pipefitters whom it represented walked off the job on January 16, and did not return until January 19 or 20. We find that the pipefitters walked off in protest of the Employer's assignment of the disputed work to engineers rather than pipefitters, and no assurances of their return to the job were given.

We find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) 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 giving due consideration to all relevant factors. The following factors are asserted in support of the claims of the parties herein:

1. Collective-bargaining agreements

Zia has contracts with both the Engineers and the Pipefitters. The Pipefitters' contract covers "all work performed by the Company under its [White Sands Test Facility] Contract . . . in the territorial and craft jurisdiction of the . . ." [Pipefitters]. The

⁵ Testimony reveals that the job "was roughly two weeks, between two and a half and three weeks"

Engineers, as pointed out *infra*, argues that its contract's general assignment to it of all maintenance work in connection with operation of the generating system, covers the work in dispute. However, we are cited to no specific contract language, and no copy of the Engineers' contract, or any portion thereof, was entered into evidence herein.

There have been no Board certifications bearing on the work in dispute, and we find nothing in the contracts between the parties, or in the application of their terms, of assistance in determining the dispute.

2. Company, area, and industry practice

The Employer and the Engineers argue that company practice has been to assign to engineers work similar to the work in dispute. The system here involved is new and unique, however, and hence no specific assignments were cited as to identical work. The Pipefitters argues that, by analogy to past company practice on related systems, installation, capital repair, and rebuilding work has always been assigned to pipefitters. All parties argue, without evidentiary support, that area and industry practice support their respective positions.

3. Relative skills and efficiency of operation

Both the Engineers and the Pipefitters claim that their respective members are better fitted, by experience, to perform the disputed work. Neither claims superior skill, and the record is silent as to apprenticeship programs or special training bearing on the work in issue. Zia argues that its choice was a logical one, economically speaking, as engineers are on the job operating the system, and pipefitters would have to be called. This is true, too, of course, only if the disputed work were to be performed while the system was in operation. It was performed, however, while the system was out of operation.

We find nothing in the record with respect to the skills of one craft as opposed to the other, or the economy of employing one rather than the other, that tends to support the claim of either, or the assignment of the Employer.

4. Method of settlement

The parties have no agreed-upon method of settlement applicable to this dispute. All past disputes between these parties at this project have been settled by meetings of their respective Locals or, at times, by their respective International presidents.

Conclusions as to the Merits of the Dispute

Upon consideration of all pertinent factors, we shall assign the work in dispute to pipefitters. The

parties have no agreed-upon method of settlement, no collective-bargaining contract between the parties, and no Board certification bears upon the issue, and nothing with regard to area or industry practice, or relative skills or efficiency of operations, lends determinative weight to the claim of either party.

We find merit, however, in the evidence supporting the Pipefitters' argument that pipefitters have traditionally performed, at least for Zia, what the Company terms "capital" work, and that the work here in dispute falls into that category. The record shows that the generating system involved was shut down in order to perform the disputed work, that pipefitters did originally install the piping system and plenum, and that pipefitters have been assigned on related systems to perform all work of a capital nature, at least on stationary (as opposed to portable) power systems. We find that the system here involved was stationary, and that the work was in the nature of a replacement or rebuilding of a piping system (i.e., "capital", as opposed to routine maintenance).⁶

We shall, accordingly, determine the existing jurisdictional dispute by deciding that pipefitters, rather than engineers, are entitled to the work in dispute. In making this determination, we are assigning the disputed work to the employees of The Zia Company who are represented by the Pipefitters, but not to that Union or its members. In the absence of any request for, or evidence in support of, a broader order, we shall limit our award herein to the particular controversy that gave rise to this proceeding.

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 the Dispute:

Pipefitters employed by The Zia Company, who are represented by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Plumbers & Steam Fitters Local No. 412, AFL-CIO, are entitled to perform the work of rebuilding or replacing flex lines and, where necessary, hard lines on the steam modules of the altitude simulation system located at the Employer's White Sands Test Facility, when such rebuilding or replacement is in the nature of capital work as opposed to routine maintenance work necessary for the continued operation of such system.

⁶ The Engineers does not seriously dispute the fact that "capital" work has been assigned to pipefitters