

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Plumbing & Steam Fitters Local No. 412, AFL-CIO¹ and The Zia Company² and Local Union No. 495, of the International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO.³ Case 28-CD-86

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 Ironworkers. Pursuant to notice, a hearing was held before Hearing Officer Shirley N. Bingham on July 11, 1967.⁴

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,⁵ 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 Atomic Energy Commission, in the assembly and testing of suspension devices. These devices are then transported to a test site located in the State of Nevada. 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 various points inside the State of New Mexico. We find that The Zia Company is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.⁶

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Pipefitters and the Ironworkers 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 joining together or coupling of lengths of pipe used as part of suspension devices, by the use of screw joints, and with chain tongs and pipe wrenches, when such coupling is for the purpose of tensile testing that pipe.

B. *The Basic Facts*

The Employer for many years has had contracts with both the Pipefitters and the Ironworkers, and has recognized those Unions as representatives of its employees classified as pipefitters and ironworkers, respectively.

The suspension devices spoken of herein are used to lower canisters to great depths into holes or wells, and thereafter to raise them. Prior to May 1967, this lowering was effectuated by use of cranes and "wire rope." This, however, necessitated moving cranes into position whenever lowering or raising was done. The operation at any well might be repeated several times, cranes could not be left at the wells indefinitely, and the moving of the cranes was considered uneconomical. It was therefore decided to substitute pipe for wire rope, and to use drilling rigs, which could be positioned above a well, and allowed to remain there throughout operations.

Prior to May, wire rope to be used as described above had always been tested at Los Alamos by ironworkers, with a special testing mechanism built by ironworkers employed by Zia. The testing spoken of is tensile testing; i.e., testing the number of pounds of pulling pressure which the wire rope could withstand. Sometime in late April, a shipment of pipe, 7-5/8 inches in diameter and in 40-foot lengths, arrived at Los Alamos from the Nevada test site. The pipe was placed in the area of the tensile testing machine, and on approximately May 3, pursuant to assignment to the work by Zia, iron-

¹ Herein called the Pipefitters

² Herein called Zia or the Employer

³ Herein called the Ironworkers

⁴ All dates herein refer to 1967

⁵ None of the parties filed a brief

⁶ See *The Zia Company*, 168 NLRB (Case 28-CD-82), issued this same day

workers began to “double join” or couple together the pipe in two-section lengths.⁷ At this point, Zia’s pipefitters walked off the job, claiming the work of coupling the lengths of pipe and of testing the pipe.

While allowing its ironworkers to continue with the coupling and testing of the pipe, Zia attempted to settle the dispute. The Pipefitters at this point led Zia to believe that it was claiming both the coupling and testing of pipe. No settlement was effected, and Zia filed the charge herein on May 4. On May 9, following completion of the coupling and testing, the striking pipefitters returned to work.

C. Contentions of the Parties

The pipe here in question was being tested to be used not as a conduit, but rather as a replacement for wire rope in structural work. Wire rope has traditionally (for Zia) been tested by ironworkers, and the right of ironworkers to such testing has never been disputed by pipefitters. When pipe is used as a conduit for liquids or solids, it is usually pressure tested. No one disputes the right in that case of the pipefitters to couple and pressure test that pipe.⁸ Although at the outset of the instant dispute the Pipefitters seemed to be claiming whatever was to be done, it is clear from the record that it is now claiming only the right to couple the sections of pipe to be tensile tested, and the right to pressure test whenever required. No one disputes the right of the pipefitters to pressure test pipe whenever such testing is required. Herein, however, pressure testing was not called for, but rather tensile testing, which pipefitters have never done. We therefore find that the only work in dispute is the coupling of the lengths of pipe for the purpose of tensile testing.

The Pipefitters argues basically that pipefitters traditionally handled all pipe or well casing, that the coupling of the pipe sections herein was done with traditional tools of pipefitters’ trade, and hence should be assigned to pipefitters.

Zia and the Ironworkers argue that tensile testing of wire rope, and now pipe, has been traditionally Ironworkers’ work, that the coupling of the sections of pipe is an integral part of the testing process, and hence knowledge of the work and efficiency and economy of operation support the Employer’s assignment of the work to ironworkers.

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 Ironworkers, and that all pipefit-

ters whom it represented walked off the job on May 3, and did not return until May 9, after the testing of that batch of pipe had been completed. We find that the pipefitters walked off in protest of the Employer’s assignment of the disputed work to ironworkers 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) 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 Pipefitters and the Ironworkers, and both Unions argue that their respective contracts favor assignment of the disputed work to employees they represent. The Pipefitters’ and Ironworkers’ contracts cover “all work performed by the Company in the territorial and craft jurisdiction of the . . . [respective Unions].”

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

Zia and the Ironworkers argue, as set forth above, that company practice has been to assign to ironworkers the tensile testing of wire rope, and that, as pipe is here being used only to replace rope, that practice governs. The Pipefitters argues generally that company, area, and industry practice have always been to assign to pipefitters the handling and coupling of all pipe, for whatever purpose. It submitted evidence of other work assignments by Zia which it argues are related, at least so far as coupling is concerned. It submitted nothing to show, however, that pipefitters have ever been assigned coupling of pipe for the express purpose of testing for tensile strength.

3. Relative skills and efficiency of operation

Both the Pipefitters and the Ironworkers claim that their respective members are better fitted, by

⁷ The testing machine was set to test 80-foot lengths of wire rope. An adaptor was made in order to attach pipe to the testing machine for tensile testing.

⁸ When used as a conduit, or when used to “line” or “case” a well, pipe is usually referred to as well casing. As there is no dispute that the pipe herein was used as a structural material, we refer to it throughout as pipe.

experience, to perform the disputed work. Neither presses a claim of superior skill, and the record is silent as to apprenticeship programs or special training bearing on the work in issue. It is true that pipefitters do more coupling work than do ironworkers, and that pipefitters more often use pipe wrenches and chain tongs. However, these tools are not strangers to ironworkers, and coupling does not demand long training or the acquisition of special skills. The Ironworkers points out that coupling of the sections of pipe for tensile testing must be done to certain specifications with regard to depth of threading covered. Coupling in this manner is a necessary and integral part of the testing process and is work more peculiar to the knowledge and experience of ironworkers. Zia argues, too, that it is much more economical to use the same craft to perform both parts of the coupling-testing process than it would be to attempt scheduling two crafts separately.

4. Method of settlement

The parties stipulated, and we find, that they have no agreed-upon method of settlement applicable to this dispute. While the Unions in the past, when attempts at settlement on the local level failed, have sent disputes to their respective International presidents, no agreement was reached herein.

Conclusions as to the Merits of the Dispute

Upon consideration of all pertinent factors, we shall assign the work in dispute to ironworkers. The parties have no agreed-upon method of settlement and no collective-bargaining contract between them. No Board certifications bear upon the issue, and nothing with regard to area or industry practice, or the skills of either craft, lends determinative weight to the claim of either party.

We find, however, that practice of the Employer, the integrated nature of the work, the experience of ironworkers, and the relative efficiency of employing ironworkers, favor assignment of the disputed work to them. In view of these factors, and the entire record in this case, we can see no reason to disturb the Employer's award.

We shall, accordingly, determine the existing jurisdictional dispute by deciding that ironworkers,

rather than pipefitters, 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 Ironworkers, but not to that Union or its members.

F. *Scope of the Award*

It is not clear from the record whether any more coupling for the purpose of tensile testing is to be performed at the Los Alamos Laboratory testing facility, but it would appear that such is probable. We shall therefore make our award for all such coupling which is done by Zia employees for the express purpose of tensile testing at its Los Alamos Laboratory testing facility.

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. Ironworkers employed by The Zia Company, who are represented by Local Union No. 495, of the International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, are entitled to perform the work of joining together or coupling lengths of pipe used as part of suspension devices, when such coupling is for the purpose of tensile testing the pipe, at the Employer's Los Alamos testing facility.

2. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Plumbing & Steam Fitters Local No. 412, AFL-CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require The Zia Company to assign the above work to pipefitters.

3. Within 10 days from the date of this Decision and Determination of Dispute, 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, shall notify the Regional Director for Region 28, in writing, whether it will or will not refrain from forcing or requiring The Zia Company, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to pipefitters rather than ironworkers.