

Local 299, Sheet Metal Workers' International Association, AFL-CIO and Metalab Equipment Company and Local 1339, United Brotherhood of Carpenters & Joiners of America, AFL-CIO. Case 6-CD-252

December 17, 1968

## 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, following charges filed July 23, 1968, by Metalab Equipment Company, herein called Metalab or the Employer, alleging that Local 299, Sheet Metal Workers' International Association, AFL-CIO, herein called Sheet Metal Workers, had violated Section 8(b)(4)(D) of the Act by engaging in conduct to force or require the Employer to assign certain disputed work to employees represented by Sheet Metal Workers rather than to employees represented by Local 1339, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, herein called Carpenters. A duly scheduled hearing was held before Hearing Officer Richard H. Martin on September 18, 1968. 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. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. The Employer filed a brief with the Board which has been duly considered.<sup>1</sup>

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 proceeding to a three-member panel.

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

### I. THE BUSINESS OF THE EMPLOYER

All parties stipulated that Metalab Equipment Company is engaged in commerce within the meaning of the National Labor Relations Act. The Employer stated that Metalab Equipment Company is engaged

in the manufacture, sale, and distribution of scientific laboratory furniture and equipment, which it manufactures at its plants located in Hicksville, New York, Beverly, West Virginia, Nashua, New Hampshire, Los Angeles, California, and McDermott, Ohio, and installs in every state in the nation; that it contracted with Baker and Coombs, general contractors, to manufacture and install laboratory furniture in the Chemistry Building at the University of West Virginia, Morgantown, West Virginia; that this contract was in excess of \$300,000.00; that during the past 12 months the Metalab received in excess of \$50,000.00 in goods at its job project for the Chemistry Building at the University of West Virginia, Morgantown, West Virginia, which goods originated outside the State of West Virginia, and that in the past 12 months Metalab had a gross volume of over \$20,000,000.00. The parties agree, and 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.

### II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Sheet Metal Workers and Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

### III. THE WORK IN DISPUTE, BACKGROUND FACTS

The disputed work which gave rise to this proceeding concerns the unloading, moving, uncrating, raising, placing, and installing of fume hood cabinets in the Chemistry Building at the University of West Virginia, Morgantown, West Virginia. The fume hood cabinet, which is attached to a base cabinet, is a part of a section of laboratory furniture. The Employer assigned the work of installing complete room sets of laboratory furniture to employees classified as carpenters, who are represented by the Carpenters, pursuant to an agreement with the Carpenters' International. The Sheet Metal Workers maintains that employees classified as sheet metal workers are entitled to the work of installing the fume hoods, but they do not claim the work of installing any of the other cabinets, or of installing the base cabinets for the fume hoods.

<sup>1</sup> The original date for receipt of briefs was September 25, 1968, which was extended to October 7, 1968. On October 7, the Respondent Sheet Metal Workers filed a Motion to Reopen Hearing or in Alternative Request for Extension of Time in Filing Brief, which motion was received on October 8. On October 9, the Request of Respondent Union for Extension of Time to File Brief was denied as untimely under Section 102.90 of the Board's Rules. The request that the hearing be reopened is based on the grounds that the Respondent's attorney was not retained until subsequent to the close of the hearing, and asserts that after discovered evidence makes it clear that certain statements made in the hearing, under oath, were without foundation in fact, and, contrary to these statements, the work of installing fume hoods has

been assigned to members of Respondent by Metalab, the Motion further asserts that, contrary to the testimony of witnesses for Metalab, the Employer has abided by decisions of the National Joint Board for the Settlement of Jurisdictional Disputes and assigned work of the type in question to employees represented by the Sheet Metal Workers' Association. In view of the fact that Respondent does not contend that such evidence is newly discovered or that it was not available at the time of the hearing, the Respondent's Motion to Reopen Hearing is denied. *Wisconsin Rubber Products Co., Inc.*, 160 NLRB 166, 167. In any event assuming, *arguendo*, that the facts alleged in the Motion of Sheet Metal Workers are true, such facts would be insufficient to rebut the record evidence, and therefore would not affect our determination of this dispute.

The Employer has a contract with the general contractor for the installation of the laboratory furniture, including the fume hoods. Another employer, who employs sheet metal workers, has a contract with the mechanical contractor for the sheet metal work, which includes the ventilation system, and also connecting the ventilation system to the fume hoods, but the mechanical contractor's contract does not include the installation of the fume hoods themselves, which work is included as part of the laboratory installation given to Metalab.

The disputed work generally involves the dismantling of factory fabricated and assembled fume hood cabinets, their installation and reassembly, and the repair to any damaged parts. Prior to this, the other base cabinets, and the base under the fume hood cabinet, are first installed, and the last section to be put in place is the fume hood cabinet. After the fume hood cabinet is attached to the base cabinet, any damage to any of the sections must be repaired and left in an unmarred and finished condition. Following the completion of this work, the plumbers, electricians, and sheet metal workers make the necessary connections of water, gas, air, electrical, and ventilation lines.

The Sheet Metal Workers concedes that on or about July 22, 1968, it picketed the jobsite at which the Employer was installing this laboratory furniture with an object of forcing or requiring the Employer to assign the unloading and installing of fume hoods to employees who are members of Sheet Metal Workers rather than to carpenters to whom the Employer had assigned the disputed work. The picket sign read:

ON  
STRIKE  
Metalab  
Unfair To  
Sheet Metal  
LOCAL 299

Prior to the picketing, the Sheet Metal Workers' Steward had passed the truck where the Employer was beginning to unload the disputed fume hoods and had asked the Employer's General Field Manager "Are you going to leave them set or do we shut you down?"; and had then said they would have him shut down within a half hour. That afternoon, the Sheet Metal Workers' Business Representative made a claim for the work to the General Field Manager, and asked him to change the assignment from the Carpenters, and to give it to the Sheet Metal Workers. In a conversation with the Employer's Job Foreman on April 8, the Steward had stated: "When they come in,

we're going to set them.", in reference to the fume hoods; and sometime in June 1968, prior to the 22nd, the Sheet Metal Workers' Business Representative stated to the Job Foreman that the fume hood work was theirs and they were going to set them, and also said: "Well, if the Carpenters set them, we're going to shut the job down." By their picketing on June 22, the Sheet Metal Workers caused a work stoppage.<sup>2</sup> Metalab thereafter filed the instant charge.

#### *A. Contentions of the Parties*

The Sheet Metal Workers claims the work on the grounds that the sheet metal workers have installed all types of fume hoods throughout the area, that they are more qualified to do such work by virtue of their special training and schooling, and that the fume hoods are connected to, and an extension of, the vent system which its members installed.

The Employer and Carpenters contend that all phases of fume hood installation should be performed by Carpenters for the following reasons: (1) The Employer has a longstanding nationwide practice, which is in conformity with area practice, of assigning the installation of the entire unit to carpenters; (2) the fume hoods are installed in the same manner as the rest of the laboratory furniture which is done by carpenters; (3) the hoods are tied into and attached to the other furniture in the laboratory as integral units, (4) the assignment of the hood installation to the carpenters who install the rest of the furniture makes for efficiency; (5) the work involves the basic skills of carpentry—minute leveling, plumbing up, adjusting sashes, doors, and alignment, refinishing marred surfaces, and leaving the furniture in a highly finished state; (6) the handtools necessary to perform the work are those of the carpenter, not the sheet metal worker; and (7) carpenters have extensive experience in this installation.

#### *B. Applicability of the Statute*

The charge, which was duly investigated by the Regional Director, alleges a violation of Section 8(b)(4)(D) of the Act. The Regional Director was satisfied upon the basis of such investigation that there was reasonable cause to believe that a violation had been committed and directed that a hearing be held in accordance with Section 10(k) of the Act. No contention is made by any of the parties that there is an agreed-upon method for settling the dispute.

On the basis of the entire record, including the admission of the Sheet Metal Workers that it struck because of the Employer's assignment of the disputed

<sup>2</sup> As a result of the picket line, members of the Sheet Metal Workers Union did not work on July 22, 1968. The next day the picketing continued, and, in addition to the sheet metal workers, the plumbers and electricians, after reporting for work but not doing anything, left

their jobs at about 9 a.m. The picketing continued through July 24, until some time between 1 and 2 p.m. on July 25, during which time these same trades did not report for work. The plumbers and electricians returned to work on July 26.

work to carpenters, we find that there is reasonable cause to believe that a violation of the Act has occurred and that the dispute is properly before the Board for determination.

### C. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various relevant factors. The Board has held that its determination in a jurisdictional dispute case is an act of judgment based upon common sense and experience, balancing such factors as are involved in a particular case.<sup>3</sup>

Neither the Sheet Metal Workers nor the Carpenters has been certified by the Board with respect to any employee involved in the instant proceeding. The Employer, through its wholly owned subsidiary, Norlab Corporation, has a contract with the Carpenters International under which it has agreed, *inter alia*, to recognize the jurisdictional claims of the Carpenters, in the locality in which any work of the Company is being done. The Sheet Metal Workers, on the other hand, has advanced no contractual claim to the work in dispute. From the testimony in the record in regard to area practice, it appears that in this particular locality, the Employer has consistently assigned work of the type in dispute to carpenters. Such testimony was not rebutted. Further, the evidence indicates that the Employer, who operates in all 50 states of the United States, consistently assigns this work to carpenters, in spite of Joint Board decisions to the contrary, and no evidence was produced showing that the Employer had ever willingly assigned the work of installing the fume hoods to sheet metal workers. No evidence was submitted in regard to the custom and practice in the industry in respect to the particular type of work in dispute here, other than the bare statement of the Carpenter's International Representative that such work is assigned to carpenters.

The skills required to perform the disputed work appear to be the traditional skills of the carpenter, and not those of the sheet metal worker, in that the installation of the fume hood requires that it be attached to a base cabinet, which has to be leveled and installed according to typical cabinetry practices (leveling, screwing, and bolting together, and gluing of tops), and the fume hood is then installed with the same practices and requirements that are needed to install the basic furniture. In view of these installation requirements, it is apparent that it would be more efficient if the fume hood base cabinet and the fume hood itself were installed at the same time, by the same people, rather than making this installation the

two step operation which it would have to be if the disputed work were assigned to the Sheet Metal Workers. Finally, after the installation has been completed, it is necessary that the furniture be left in a highly finished condition as far as its esthetic qualities are concerned. To that end, the skills of the carpenter are again required to repair any marred or scratched surfaces, fill any cracks, and make necessary adjustments to doors, drawers, and glass. The tools and experience necessary to do all of this work are those of the carpenter, and not of the sheet metal worker, especially since the tools of the latter are primarily used in fabricating, and there is no fabrication involved in the installation. And the experience required is obviously possessed by carpenters here, since the Carpenters are requested by the Employer to send those carpenters who have previously worked for and been trained by him, or who specialize in this type of installation, and these requests are followed.

### Conclusion as to merits of dispute

Upon consideration of all pertinent factors in the entire record, we shall not disturb the Employer's assignment of the disputed work to carpenters. The Sheet Metal Workers has no contractual claim to the work, as do the Carpenters. The work requires the skill and tools of carpenters. The Employer has both an area and a nationwide history of assigning work of the type in dispute to carpenters, and obviously is satisfied with the results thus achieved, which show an efficiency and economy of operation, and desires no change. Accordingly, we shall determine the existing jurisdictional dispute by deciding that carpenters represented by the Carpenters, rather than sheet Metal workers represented by the Sheet Metal Workers, are entitled to the work of unloading, moving, uncrating, disassembling, assembling, raising, placing, installing, and repairing fume hoods. In making this determination, we are awarding the work in question to employees represented by the Carpenters, but not to the Carpenters or its members.

### Scope of the determination

The Employer, in his brief, requests that the Board determine the dispute by assigning the disputed work to carpenters, represented by Carpenters, and in addition, requests that the Board determination apply to the area for this Employer, in view of the Sheet Metal Workers' admission that it intends to claim the work of installing fume hoods on all future work, and in view of the fact that the Employer has real commitments for future work of the same type in the area.

<sup>3</sup> *International Association of Machinists, Lodge No. 1743, AFL-CIO (J A. Jones Construction Company, 135 NLRB 1402.*

In the past it has been the Board's policy to make an award broad enough to encompass the geographical area in which an employer does business (wherever jurisdictions of the competing unions coincide) in circumstances where there is an indication that the dispute is likely to recur.<sup>4</sup> In view of the fact that these same International Unions, although different Locals thereof, have previously appeared before the Board in a dispute over the same work at another jobsite of this Employer,<sup>5</sup> that the Employer does have future work commitments in the area, and that the representative for the Sheet Metal Workers did state in the hearing that it intends to claim such work in the future, we believe that there is a reasonable likelihood that this dispute will be repeated. Therefore, our determination in this case applies to all similar disputes occurring within the State of West Virginia, wherever the jurisdictions of the competing unions coincide.

#### 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 hereby

makes the following determination of the dispute.

1. Carpenters who are represented by Local 1339, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, are entitled to perform the work of unloading, moving, uncrating, disassembling, assembling, raising, placing, installing, and repairing of fume hoods on work performed by Metalab Equipment Company in the State of West Virginia, wherever the jurisdictions of Local 1339, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, and Local 299, Sheet Metal Workers' International Association, AFL-CIO, coincide.

2. Local 299, Sheet Metal Workers' International Association, AFL-CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Employer to assign the above work to sheet metal workers who are represented by the Sheet Metal Workers.

3. Within 10 days from the date of this Decision and Determination of Dispute, the Sheet Metal Workers shall notify the Regional Director for Region 6, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to sheet metal workers rather than to carpenters

---

<sup>4</sup> *International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 204, AFL-CIO (Hawaiian Dredging & Construction Co., Ltd)*, 160 NLRB 1241, 1254.

<sup>5</sup> *Local 408, Sheet Metal Workers' International Association, AFL-CIO (Metalab Equipment Company)*, 149 NLRB 763.