

**General Building Laborers' Local 66, Laborers' International Union of North America, AFL-CIO and D. Fortunato, Inc. and Mosaic & Terrazzo Helpers & Terrazzo Polishers & Finishers Association, Local 35, I.A. of M.S. & S.P.R. & S.T. & M.S.H. & T.W.H. and Seaboard Tile & Terrazzo Corp. Case 29-CD-73**

June 11, 1969

**DECISION AND DETERMINATION OF DISPUTE**

BY MEMBERS FANNING, BROWN, AND JENKINS

This is a proceeding pursuant to Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges by Seaboard Tile & Terrazzo Corp., hereinafter called Seaboard, alleging that General Building Laborers' Local 66, Laborers' International Union of North America, AFL-CIO, hereinafter called Laborers' or Local 66, violated Section 8(b)(4)(D) of the Act. Pursuant to notice, a hearing was held before Bernard Wray, Hearing Officer, on February 25 and March 5, 1969. All parties appearing 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 Board has reviewed the rulings made by the Hearing Officer at the hearing and finds that they are free from prejudicial error. They are hereby affirmed. Briefs filed by the Laborers' and Local 35, Mosaic & Terrazzo Polishers and Finishers Association, have been duly considered.

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

**I. THE BUSINESSES OF THE EMPLOYERS**

D. Fortunato, Inc., hereinafter called Fortunato, is a general contractor and New York corporation engaged in the building and construction industry, which annually purchases goods valued in excess of \$50,000 from firms located outside the State of New York. Seaboard, a subcontractor and New York corporation engaged in the installation of terrazzo tile, ceramic tile and related products, annually purchases goods valued in excess of \$50,000 from firms located outside the State of New York. The parties stipulated that the above are engaged in commerce within the meaning of Section 2(5) and (6) of the Act, and we find that it will effectuate the purposes of the Act to assert jurisdiction herein.

**II. THE LABOR ORGANIZATIONS INVOLVED**

The parties stipulated, and we find, that the Laborers' and the Mosaic & Terrazzo Helpers & Terrazzo Polishers & Finishers Association, Local 35, I.A. of M.S. & S.P.R. & S.T. & M.S.H. & T.W.H., herein called Local 35, are labor organizations within the meaning of Section 2(5) of the Act.

The parties further stipulated, and we find, that Local 3, Mosaic and Terrazzo Workers Union, a/w the Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, herein called Local 3, and Local 780, Operative Plasterers and Cement Masons International Union, AFL-CIO, are labor organizations within the meaning of the Act.

**III. THE DISPUTE**

**A. Facts**

The work in dispute consists of transporting concrete mix from transit mix delivery trucks to the point of pouring and the pouring of concrete bedding in conjunction with the installation of structural, or Agra-Traz, terrazzo floors at the construction site of the Peconic Street School in Ronkonkoma, Long Island, New York.

Fortunato contracted with the Board of Education, Suffolk County, New York, for the construction of the Oakdale School and the Peconic School. Thereafter, Fortunato contracted with Seaboard for the installation by Seaboard of terrazzo floors in the corridors, lobby, and cafeteria of the two schools.

The parties stipulated that at all times material hereto Fortunato has been a member of the Building Trades Employers Association of Long Island, Inc., herein BTEA, which, on behalf of its member employers including Fortunato, has been a party to a collective-bargaining agreement with Local 66 covering building laborers performing specified work tasks.<sup>1</sup> At all times material, Seaboard has been a member of the Terrazzo and Mosaic Contractors Association of Greater New York, herein called the Association, which Association has collective bargaining agreements with Local 35 and Local 3.<sup>2</sup>

On or about September 25, 1968, the terrazzo installations at the Oakdale School were substantially complete. On September 29, 1968, a meeting was held at the Oakdale School relating to

<sup>1</sup>Article Four of that agreement states that laborers shall exclusively perform the following work: ". . . unloading from trucks . . . when done by hand at the job site and . . . wheeling, carrying, handling and distribution of all dry and mixed materials used in all types of concrete and cement work, cinder or gravel fill under concrete slabs, and reinforcing and form material."

<sup>2</sup>Article IV(b) of the contract between the Association and Local 35 includes work within the jurisdiction of Local 35 as "preparing, mixing by hand, or by mixing machine and distributing, with shovel, rake, hoe or pail, all kinds of concrete foundations necessary for mosaic and terrazzo work; also the helping with the same bed, tar paper and wire lath . . ."

the dispute as to who would perform the work of transporting the underbed material for the installation of structural terrazzo, or Agra-Traz, to the point of pouring and pouring at the Peconic School. Present at this meeting were the following persons: Domonick Fortunato; Robert Flanagan, field coordinator for Fortunato; Louis Lovisa, President of Seaboard; John Ippolito, President of Local 66; Fay Fecci, business agent of Local 35; Louis Pasciviti, business agent of Local 3; and Frank Magdaleone, business agent of Local 780. At that meeting, Ippolito stated that he would cause a work stoppage by Local 66's members employed by Fortunato as laborers at the Peconic School if Seaboard failed or refused to assign the laborers work which Seaboard had assigned to its employees, members of Local 35, the work previously noted and in dispute here.

On October 8 and 9, and thereafter until the Board secured a restraining order and injunction in the United States District Court, Local 66 by its president, Ippolito, and its shop steward, Carmine Ventura, directed employees of Fortunato employed as laborers to refuse to perform work they were directed to perform by supervisors because Seaboard had assigned the work in dispute to its employees represented by Local 35 rather than to laborers; and they would not permit laborers represented by Local 66 to do the work they were directed to perform, such as the grading of grounds necessary to receive Agra-Traz, until employees represented by Local 66 were assured of being assigned the work in dispute.

All parties stipulated that the object of the above actions by Local 66 was to force or require the assignment of the work in dispute to employees under the jurisdiction of Local 66 rather than to employees of Seaboard, under the jurisdiction of Local 35, to whom Seaboard has assigned the work.

### *B. The Work in Dispute*

The work in dispute concerns the hauling and pouring of a cement mix used as a bed for Agra-Traz terrazzo topping. It appears that the use of Agra-Traz, or structural terrazzo as it is sometimes called in the record, has been increasing over the years. Seaboard, which does 95 to 98 percent of the Agra-Traz work in the area, has been using Agra-Traz for about 5 years.

Conventional terrazzo, as distinguishable from Agra-Traz, is installed over a concrete base laid by the laborers. The necessity of this concrete base in which metal lath is laid, arises from the fact that conventional terrazzo is installed over airspace, while Agra-Traz terrazzo is usually set up on the ground or a dirt grade with no airspace beneath.<sup>3</sup> Anytime after the concrete base, placed by the laborers, hardens, the terrazzo workers put down a sand cushion, cover the sand cushion with tar paper, and install a 1 1/2- to 3 1/2-inch concrete bed, with wire lath placed by the lathers, for the terrazzo.

While this concrete bed is still in semi-liquid form, terrazzo mechanics, represented by Local 3, insert metal strips in it which are allowed to stay overnight. The next day, when the strips are held firm by the concrete bed, the terrazzo topping is applied. None of the conventional terrazzo installation work is in dispute.

In an Agra-Traz installation, a 3 1/2- to 4-inch concrete bed, in which wire lath is laid, is placed on grade or on dirt; while that is still in semi-liquid form, metal strips are installed. The following day, the terrazzo topping is placed over the concrete bed. It is the hauling and pouring of the mix for the concrete bed in the Agra-Traz installation process that is in dispute.

### *C. Contentions of the Parties*

Local 35 contends that the Employer's assignment of the work to the terrazzo workers was correct because it was supported by past practice, area practice, economy, by experience possessed by members of Local 35, and the fact that the Employer is satisfied with the performance of the work by them.

Respondent, Local 66, argues that traditional jurisdictional considerations support the claim of the laborers. In this regard, Respondent argues that the concrete underbedding or slab is the same, whether it is conventional or Agra-Traz, and therefore the skills and duties of the laborers are the same. Additionally, the laborers claim that an Appeals Board award from the Appeals Board of the National Joint Board for Settlement of Jurisdictional Disputes supports their claim.

### *D. Applicability of the Statute*

Before the Board may proceed 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.

The parties stipulated that Local 66, by its officers and agents, threatened Fortunato and Seaboard that it would cause a work stoppage by Local 66 members employed by Fortunato, and later did cause a work stoppage at the Peconic School, since Seaboard failed to assign to employees who are under the jurisdiction of Local 66 work which Seaboard has assigned to its employees represented by Local 35. The parties further stipulated that the object of the above actions by Local 66 was to force or require the assignment of the work in dispute to employees under the jurisdiction of Local 66 rather than to employees of Seaboard, under the jurisdiction of Local 35, to

<sup>3</sup>Agra-Traz was installed in Brooklyn, New York, in a joint beam construction and corruforn situation, so that all Agra-Traz is not installed on grade

whom Seaboard has assigned the work. Accordingly, we find, on the basis of the record, that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

### *E. 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, and the Board has held that its determination in a jurisdictional dispute case is an act of judgment based upon common sense and experience in balancing such factors.

Certain factors usually considered by the Board in making jurisdictional awards are not present in this proceeding. Thus, the record does not disclose a certification relating to the disputed work, nor has any clear jurisdictional award issued regarding the dispute. Local 66 claims that an award by the Appeals Board under the Plan for Settlement of Jurisdictional Disputes, Building and Construction Industry, of August 1968, of a dispute in Arizona as to the "handling and pouring of concrete sub-floor," favors an award to the laborers. The Appeals Board found that "the handling and placing of concrete sub-floor is the work of the laborers. In other respects there is no basis to change the contractor's assignment." However, specifications for the project indicated that the work involved conventional terrazzo. The award does not establish any clear precedent for determining this dispute in that we are unable to determine whether the term "concrete sub-floor" in the award applies to the hardened structural slab which is not the work in dispute here or the minimum slump bed on which terrazzo topping is placed. Nor are we able to determine what other assignments the contractor made in that dispute. In view of this ambiguity, we cannot rely on the Appeals Board award as a determinative factor for our consideration. There are, however, other relevant factors to be considered.

#### 1. Contracts between the parties

As has been noted above, Seaboard, as a member of the Association, is a party to the contract between that Association and Local 35, representing terrazzo workers. Under the terms of this agreement, the contested work is to be performed by terrazzo workers. The specific language in this agreement is one factor favoring an award to the terrazzo workers.

Local 66 submitted into evidence an agreement between it and BTEA, of which Fortunato is a member. However, this contract does not mention terrazzo tile or the minimum slump concrete bed which serves as an immediate base for the terrazzo topping. Moreover, concrete similar to the minimum slump concrete bed installed by terrazzo workers on

the second floor of the Peconic School is not claimed by the Laborers. Under these circumstances, the contract between Local 66 and BTEA is not a determinative factor in this dispute.

#### 2. Employer and area practice

The record clearly establishes that, since Seaboard instituted the use of Agra-Traz terrazzo about 5 years ago, employees of Seaboard have performed the work in dispute, and that at all times material they have been represented by Local 35. Since Seaboard performs 95 to 98 percent of the Agra-Traz work in the area, the area practice would naturally conform to Seaboard's practices. However, uncontradicted evidence in the record also establishes that three other mentioned companies who have performed some Agra-Traz work in the area assign the disputed work to terrazzo workers represented by Local 35. Under the circumstances, we find that the area and Employer practice favor the claim of the terrazzo workers.

#### 3. Skill and efficiency

It does not appear that any special skill is needed or involved in hauling the concrete material, although the record indicates that it may be handled differently. Seaboard's president testified that when pouring, the worker pouring must anticipate the wishes of, and work in conjunction with, the terrazzo mechanic. Nevertheless, we would not find that any skill is needed and it would appear that either laborers or terrazzo helpers could perform the work.

Seaboard's president explained that in the installation of terrazzo, the concrete bed is poured in the morning, the pouring usually ending about 1 p.m. Thereafter, the terrazzo workers, who have hauled and poured the concrete, assist the terrazzo mechanics in installation of the metal strips and assemble the topping and mix for work the next day. As this afternoon work is indisputably the work of terrazzo workers, there would be no work available for laborers of the Employer in the afternoon should the morning work be assigned laborers, and no work in the morning for the terrazzo workers. Additionally, when the terrazzo topping is installed the following day, Seaboard would have no available work for laborers, except, possibly, the removal of slop after the topping is finished. Although the laborers claim that Agra-Traz terrazzo and conventional terrazzo could be applied at the same time, thereby keeping both laborers and terrazzo workers busy, uncontradicted testimony indicated that would not be practicable as it would tie up too much floor space at one time and interfere with other work. We find that, on the basis of the record, the factor of efficiency and economy favors an award of the disputed work to the terrazzo workers.

Upon consideration of all pertinent factors in the entire record, we shall not disturb Seaboard's assignment of the disputed work to employees represented by Local 35. Terrazzo workers have efficiently performed the work for Seaboard, who desires to continue them on the job. The present assignment of the work in dispute is consistent with area practice, Seaboard's past practice, the bargaining agreement between Seaboard and Local 35, and efficiency of the Employer's operations. Accordingly, we shall determine the existing jurisdictional dispute by deciding that terrazzo workers, represented by Local 35, rather than laborers, represented by Respondent, Local 66, are entitled to the disputed work. In making this determination, we are assigning this work to employees who are represented by Local 35, 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 hereby makes the following determination of

dispute.

1. Terrazzo workers who are represented by Mosaic & Terrazzo Helpers & Terrazzo Polishers & Finishers Association, Local 35, I.A. of M.S. & S.P.R. & S.T. & M.S.H. & T.W.H., are entitled to perform the work of transporting from transit mix delivery trucks to the point of pouring and pouring of concrete bedding in conjunction with the installation of Agra-Traz terrazzo floors at the Peconic Street School, Ronkonkoma, New York.

2. General Building Laborers' Local 66, Laborers' International Union of North America, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Seaboard Tile & Terrazzo Corp. to assign the above work to laborers represented by it.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 66 shall notify the Regional Director for Region 29, in writing, whether or not it will refrain from forcing or requiring Seaboard Tile & Terrazzo Corp. by means proscribed by Section 8(b)(4)(D) to assign the work in dispute to laborers represented by it rather than to employees represented by Local 35 of the Mosaic & Terrazzo Helpers & Polishers & Finishers Association.