

Building and Construction Trades Council of Las Vegas; International Association of Bridge, Structural and Ornamental Iron Workers, Local 433, AFL-CIO and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, and its Affiliated Local 720¹ and Hoffend & Sons, Inc. Case 31-CD-37

October 21, 1969

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN McCULLOCH AND MEMBERS
JENKINS AND ZAGORIA

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following an amended charge by the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, herein called the Charging Party or IATSE, alleging a violation of Section 8(b)(4)(D) by Building and Construction Trades Council of Las Vegas, herein called the Council, and by International Association of Bridge, Structural and Ornamental Iron Workers, Local 433, AFL-CIO, herein called Iron Workers Local 433. Pursuant to notice, a hearing was held on June 11, 17, and 18, 1969, in Las Vegas, Nevada, before Paul J. Driscoll, Hearing Officer. The Employer, Hoffend & Sons, Inc., IATSE and its Local 720; the Council and Iron Workers Local 433, 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. IATSE and its Local 720, and Iron Workers Local 433 have filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.² Upon the entire record in this case, the Board makes the following findings:

¹Local 720 was permitted to intervene at the hearing on the basis of its claim to the disputed work

²A motion by counsel for IATSE and its Local 720 to strike the testimony of Lansford, the business agent of Iron Workers Local 433, on the ground that such testimony was based on his belief, opinion, or impression as to the work performed by Local 433 at the Frontier Hotel, was referred to the Board by the Hearing Officer. This motion is hereby denied as the instant proceeding is not limited by strict rules of evidence, being in the nature of an investigatory proceeding

I. THE BUSINESS OF THE EMPLOYER

The Employer is engaged in the business of furnishing and installing stage equipment for theatrical stages. As a subcontractor of Taylor of Nevada, Inc., it was engaged in installing the stages at the International Hotel being constructed in the Las Vegas, Nevada metropolitan area. During the preceding year the Employer received products valued in excess of \$50,000 from outside of Nevada, which products were used in the International Hotel project. We find, accordingly, that the Employer is engaged in commerce within the meaning 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 IATSE, its Local 720, the Council, and Iron Workers Local 433 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The dispute concerns the work of installing stage rigging (including counter weights) and curtains and draperies, 95 percent of which involves bolting and welding, on three stages at the International Hotel construction project in Las Vegas. It has recently been the Employer's nationwide practice to assign this type of work to members of Iron Workers because on most such jobs, Iron Workers could supply the only qualified workers necessary for this work, including certified welders. The Employer therefore entered into a collective-bargaining contract with the Iron Workers International Union on September 3, 1968. However, because IATSE Local 720 informed the Employer that it had performed all the work of this kind within recent years in the Las Vegas metropolitan area, and assured the Employer that it could furnish sufficient certified welders to complete this work, the Employer entered into a contract on April 28, 1969, with, and on the following day assigned the unloading of stage equipment to, that Local.

When, on April 29, 1969, Iron Workers Local 433 discovered members of Local 720 unloading stage rigging equipment at the International Hotel job site, it called a meeting of the Council at which representatives of other building trades unions were also present, and it was decided that the Iron Workers were entitled to the work in question. The next day, April 30, a meeting was held at the job site attended by Arnold (a representative of the Council), a Taylor official, Lansford (the Iron Workers Local 433 business agent), representatives of other building trades unions, and representatives of the Employer. At this meeting, representatives of

other building trades unions made inquiry about the scope of the work but no claim was made by them or on their behalf. However, Arnold threatened that if the stagehands were not removed from the job, the entire job would be closed down. Thereafter, the Employer notified the members of IATSE Local 720 working on the job that they were terminated because Arnold or Lansford had threatened to shut down the job unless stage rigging work was assigned to the Iron Workers. At a subsequent meeting on May 3 in the office of Local 720, attended by the Employer and Lansford, Nicholson, an officer of the Employer, stated that the decision to replace members of Local 720 with members of Iron Workers on stage rigging work was made because of the threat by the Iron Workers, whereupon Lansford said "that's right."

The Employer then executed an agreement with, and assigned the work of rigging the stage to, Iron Workers Local 433. Subsequent thereto, IATSE filed the amended charge in the instant case.

B. *The Work in Dispute*

IATSE and its Local 720, and Iron Workers Local 433 now agree, and we find, that the work in dispute is the installation of stage rigging (including counterweights), curtains, and draperies for the three stages at the International Hotel construction project in Las Vegas, Nevada.

C. *Contentions of the Parties*

Iron Workers Local 433 preliminarily contends that the notice of hearing should be quashed because (1) it had agreed to the terms of a settlement prepared by the Regional Director, and thus there was no dispute to be determined; and (2) there is no probable cause to find that it committed an 8(b)(4)(D) violation because Arnold, who had no authority to act, made the sole threat of stoppage of work. On the merits Iron Workers Local 433 contends that the Employer's assignment of work to it should be affirmed, as it had the effect of giving jobs to unemployed ironworkers, while members of IATSE Local 720 had full employment as stagehands. Additionally, Iron Workers Local 433 argues that the Employer preferred to assign the work to members of that Local because of safety and economy, and its members' ability to do welding; it also relies on the Employer's recent practice of assigning such work in connection with new construction to the Iron Workers, and the Employer's contracts with the Iron Workers.

In contending that the work should be awarded to members of Local 720, IATSE and Local 720 rely chiefly on the Las Vegas metropolitan area practice of having such work performed by members of Local 720, and the Employer's contract of April 29, 1969, with, and its original assignment to, that Local. The Employer takes no position on these

issues.

D. *Applicability of the Statute*

The charges herein allege violations of Section 8(b)(4)(D) of the Act by the Council and Iron Workers Local 433. As set forth above, the record contains evidence that on April 30, 1969, Arnold, an agent of the Council, in the presence of Lansford, an agent of Iron Workers Local 433, threatened to shut down the job if the disputed work was performed by members of IATSE Local 720. At a subsequent meeting, Lansford ratified that threat as emanating from Iron Workers Local 433. On the basis of the foregoing and the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D), by both the Council and Iron Workers Local 433, has occurred and that the dispute over whether the work should be assigned to members of Iron Workers Local 433 or IATSE Local 720 is properly before the Board for determination.

Nor do we regard the proposed settlement agreement as a bar to a finding that there is viable dispute before us. Thus, although the agreement was signed by Iron Workers Local 433 in the form proposed by the Regional Director, by its terms it was not binding unless executed by all parties and approved by the Regional Director, and as conceded by Iron Workers Local 433, it was never executed by the Charging Party nor approved by the Regional Director.³

E. *The 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.⁴

We have considered the various contentions of the parties and the entire record, and find that the following are pertinent to our determination herein.

1. Neither Union has been certified by the Board as the exclusive bargaining representative of employees engaged in performing the work in question.

2. Both Unions obtained from the Employer contract language which appears to have been intended to cover the work in dispute, although such language does not refer specifically to new construction. The Employer's 1968 contract with the Iron Workers International provides that it "covers all work coming under the jurisdiction of (Iron Workers)" The Iron Workers International constitution refers generally to Iron Workers'

³We find no merit in the contention of Iron Workers Local 433 that the Regional Director should have approved the informal settlement agreement, as this matter was within the Regional Director's discretion.

⁴*NLRB v. Radio Television Broadcast Engineers Union Local 1222, International Brotherhood of Electrical Workers (Columbia Broadcasting System)*, 364 U.S. 573, *International Association of Machinists, Lodge No. 1743, AFL-CIO (JA Jones Construction Company)*, 135 NLRB 1402, 1411.

jurisdiction as iron work in connection with construction, and specifically to welding and to "stage equipment, and counterweight system and rigging . . ." The Employer's 1969 contract with IATSE Local 720 does not refer specifically to welding but contains occupational classifications pertaining to the installation (1) of theatrical "properties" as that term has been used in the "entertainment" industry, (2) "theatrical stage counterweight systems", and (3) metal and allied components "at places of entertainment "

3. Although incomplete, the evidence submitted as to industry practice shows that most stage rigging is performed by ironworkers or carpenters, and some by laborers or stagehands

4 The Employer's recent practice has been to employ ironworkers

5 The predominant Las Vegas metropolitan area practice has been for stagehands to perform stage rigging involving counterweight systems, but, where new construction is involved ironworkers and carpenters have also performed such work in this area.

6. The testimony of the Employer's representatives indicates the Employer prefers to employ ironworkers rather than stagehands where greater heights and welding are involved. The instant job involved greater than normal heights and welding IATSE Local 720 assured the Employer that it could furnish sufficient qualified workmen including welders, and the evidence reveals that it had "some" certified welders Four or five welders were referred by Iron Workers Local 433 to the instant job and performed the work to the Employer's satisfaction, and in a manner considered quick, safe, and efficient.

7. IATSE Local 720 members were fully employed as stagehands in the area, and if they had performed the construction work in dispute they would have required a later starting time, whereas ironworkers who were referred by Iron Workers Local 433 were unemployed and started work at the customary starting time Thus an award of work to

stagehands would have resulted in ironworkers being without jobs and would have required the Employer to arrange special working schedules, whereas the assignment to ironworkers did not cause unemployment among stagehands, or inconvenience to the Employer.

We have considered all the above factors, and particularly in view of the Employer's present practice, its preference for employing ironworkers to perform installation work at great heights on new construction, the stagehands' possession of full employment apart from this construction project, and the considerations of safety and economy inherent in these factors, we conclude that they predominate in favor of ironworkers represented by Iron Workers Local 433, and we shall determine the dispute in their favor ⁵

In making this determination, we are assigning the disputed work to ironworkers who are represented by Iron Workers Local 433, but not to Iron Workers Local 433 or its members. As there have been no instances of prior disputes between the parties, we shall limit our determination to the particular dispute which 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 hereby makes the following determination of the dispute:

Ironworkers employed by the Employer and represented by Iron Workers Local 433 are entitled to the work of installing stage rigging (including counterweights), curtains, and draperies in the three stages at the International Hotel construction jobsite in the Las Vegas metropolitan area.

⁵As our determination of the disputed work, based on all factors, is adverse to IATSE Local 720, we find it unnecessary to pass on the contention of Iron Workers Local 433 that IATSE Local 720's contract violates Section 302 of the Act