

Local 1184, Southern California District Counsel of Laborers and H. M. Robertson Pipeline Constructors and Local 364, United Association of Plumbers and Pipefitting Industry. Case 21-CA-287

August 27, 1971

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND BROWN

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by H. M. Robertson Pipeline Constructors, hereinafter called Robertson or the Employer, alleging that Local 1184, Southern California District Council of Laborers, hereinafter called Laborers, had violated Section 8(b)(4)(D) of the Act. A duly scheduled hearing was held before Hearing Officer David G. Weber on January 28 and February 8 and 19, 1971, in Los Angeles, California. 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. Thereafter briefs were filed by all parties.

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 Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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

I. THE EMPLOYER

The parties stipulated, and we find, the H. M. Robertson Pipeline Constructors is a California corporation which is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated and we find that Laborers and Local 364, United Association of Plumbers and Pipefitting Industry, herein called Plumbers, are labor organizations within the meaning of the Act.

III. THE DISPUTE

A. *The Work in Dispute; the Positions of the Parties*

The work in dispute involves the installation of

watering system projects. The Laborers and the Employer contend that two projects are involved, one located at Colton in San Bernardino County, California; and the other at Desert Hot Springs in Riverside County, California. The Plumbers, on the other hand, contends that the proceeding should be limited to the work dispute as set forth in the notice of hearing; i.e., installation of watering systems in an unimproved subdivision at Desert Hot Springs, California.

B. *Background and Facts of the Dispute*

In April 1970, the Employer, using asbestos cement (transite) pipe of 4-inch to 12-inch diameter, began installing a water distribution system of about 40,000 feet for a subdivision at Desert Hot Springs, California. The pipe installation involves laying the transite pipe in a trench, lubricating the ends of the sections, and pushing them together. The Employer assigned the work to its employees represented by the Laborers, with which the Employer has a longstanding agreement.

On November 2, 1970, Plumbers, relying on an agreement executed in October 1970, also claimed the pipe installation work. The Employer thereupon requested that two plumbers be sent to the job from the Plumbers hiring hall. This request was canceled when Smith, business manager of Laborers, upon being informed of the Plumbers claim, threatened that if the plumbers were assigned the pipe installation work the Laborers would close down the job. At a meeting the next day, arranged in an effort to settle the dispute, the parties reiterated their positions, with Smith repeating his threat of a walkout if plumbers were put on the job. The Desert Hot Springs job is still in progress with laborers doing the pipe installation work.

Sometime after November 2, Smith, on the basis of information he had received that a Plumbers official had been on the Employer's job at Colton, threatened the Employer that Laborers would shut down the Colton job if the Employer used plumbers to lay pipe. The Colton job is also continuing with laborers doing the pipe installation work.

C. *Contentions of the Parties*

The Employer contends that Laborers violated Section 8(b)(4)(D) of the Act by threatening a walkout if the Employer assigned the work in dispute to plumbers, and that there is no agreed-upon method for the adjustment of the dispute. The Employer further contends that the work has been assigned to employees represented by Laborers and that such work should properly be awarded to members of Laborers in view of (a) the Board's

decision in *L & K Contracting Company, Inc.*, 186 NLRB No. 152; (b) the skills and work involved; (c) the assignment made by the Employer; (d) the company and industry practice; (e) efficiency of operation; (f) the longstanding agreements with Laborers; and (g) the lack of a binding arbitration agreement or award.

Laborers has taken a position basically consistent with that of the Employer and further notes that neither union involved has been certified by the Board as the collective-bargaining representative for a unit of the Employer's employees.

Plumbers moved to quash the notice of hearing, contending that there is no reasonable cause to believe that the Act has been violated since: (1) the coercive conduct is limited to that of Laborers, whose members have continued to perform the work in issue, and (2) the parties have provided a means for the private settlement of this dispute. Finally, Plumbers argues that, if the dispute is cognizable under Section 10(k), past Board decisions determining similar disputes in favor of laborers are distinguishable. Thus, Plumbers claims that, unlike past cases, here, its contract with the Employer assigns some of the work to its members. Hence Plumbers argues that the Board should determine the dispute in favor of its members.

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. In this regard we find no merit in Plumbers claim that the proceeding should be quashed on the ground that the Laborers, whose members are performing the work, is the only labor organization to which coercive conduct may be attributed. Under settled Board policy, improper pressure by a union rivaling that which has been assigned the work is not necessarily a prerequisite to the existence of a 10(k) dispute.¹ As it appears from the record that Laborers threatened to pull its men off the job if the Employer awarded any work to Plumbers, pursuant to Plumbers claim, there is reasonable cause to believe both that an object of Laborers action was to force the Employer to continue to assign all of the disputed work to individuals represented by Laborers and that a violation of Section 8(b)(4)(D) has occurred.

¹ *National Press, Incorporated*, 186 NLRB No. 26, and *Pulitzer Publishing Company*, 187 NLRB No. 35.

² *Newspaper and Mail Deliverers' Union of New York and Vicinity (News Syndicate Co., Inc.)*, 141 NLRB 578, 580.

³ *International Union of Operating Engineers, Local No. 450, AFL-CIO (Hydrocarbon Constr. Co.)*, 190 NLRB No. 20, fn. 1; *Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting*

Also contrary to the contention of Plumbers, in the circumstances of this case, we are not satisfied that all parties have agreed to be bound to a voluntary private settlement of this dispute. The Board has long declined to find that grievance or arbitration proceedings not involving all parties to the dispute constitute an adequate method for adjustment of the dispute within the meaning of Section 10(k). The voluntary adjustment must bind all disputing unions as well as the Employer in order to come within the meaning of voluntary settlement as set out in Section 10(k).² The fact that there are two contracts, one between the Employer and Laborers and one between the Employer and Plumbers, each providing for the settlement of disputes under the contract by arbitration does not support the conclusion that all parties have agreed to be bound by a single tripartite arbitration proceeding, or to a means by which a final and binding adjustment could be reached. We also find that, as the Employer is not bound to the National Joint Board, for the reasons set forth in our previous decisions,³ these procedures do not serve as a private settlement means sufficient to preclude us from proceeding to a determination of the instant dispute. Thus at all times material there was no method for the voluntary adjustment of the dispute among the parties. Under these circumstances, we find that it will effectuate the policies underlying Sections 10(k) and 8(b)(4)(D) for us to determine the merits of the dispute. Accordingly, we find that this dispute is appropriate for resolution under Section 10(k) of the Act.

On the basis of the entire record, 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.

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 various relevant factors.⁴ The Board has held that its determination in a jurisdictional dispute is an act of judgment based upon commonsense and experience, reached by balancing those factors involved in a particular case.⁵

The following factors are relevant in making a determination of the dispute before us:

Industry of the United States and Canada (L & K Construction Co.), 186 NLRB No. 152.

⁴ *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO (Columbia Broadcasting System)*, 364 U.S. 573, 586.

⁵ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Co.)*, 135 NLRB 1402.

1. Certification, collective-bargaining agreements, and awards

Neither of the labor organizations involved herein has been certified by the Board as the collective-bargaining representative for a unit of the Employer's employees. The Employer has recognized Laborers and has had a longstanding contractual agreement with them which appears to contemplate that employees represented by Laborers are to perform the work in dispute. Although Plumbers has also entered into a collective-bargaining agreement with the Employer, subsequent to the initiation of the projects now in dispute, which appears to assign a portion of the work to employees it represents, the Employer has not honored this provision of the agreement. However, we are not satisfied that either the contractual agreement of Laborers or Plumbers with the Employer is entitled to controlling weight for the purposes of our determination.⁶ Accordingly, we regard the contracts as a neutral factor which does not favor either labor organization. Although we do not consider the National Joint Board's award binding on the Employer and the Laborers, we do consider it a factor in determining the proper assignment of the work in dispute. However, in view of all the circumstances, we are of the opinion that the National Joint Board's award should not be given controlling weight.⁷

2. Company and area practice

The record indicates that the Employer and other area employers frequently and regularly use laborers to perform the type of work herein and that, but for several exceptions, the Employer has consistently assigned work similar to that herein to laborers throughout the rest of Southern California over the past several years. The record also establishes that the area practice favors laborers. Therefore, we find these factors favor assignment of the disputed work to employees represented by Laborers.

3. Skills, efficiency, and economy

Both Laborers and Plumbers maintain that their members possess sufficient skills to perform the work in dispute. There is no showing that the disputed work requires a degree of skill not possessed by laborers. The record establishes that laborers are quickly able to master the relatively few skills needed for performing the work in question and that they

have performed the work to the satisfaction of the Employer.

The record further establishes that the continued use of laborers is more efficient and economical than would be the case if the plumbers were to perform the work in question. Under its present practice, the Employer uses four laborers to perform the disputed work. If forced to use plumbers, the Employer would have to employ two plumbers and three laborers (or possibly four laborers). Thus the Employer is now able to perform the same amount of work with one or two fewer employees than would be the case if the plumbers were assigned the work. Moreover, Plumbers claims only the actual installation of the piping and does not seek to perform the other requisite steps (such as digging, backfilling, etc.), hence their employment would result in additional idle time for themselves and for the laborers, as each group would have to wait for the other to complete its respective duties. This, of course, would be in marked contrast to the present practice where the laborers have no idle worktime, but are expected to perform a wide variety of tasks in succession and without interruption. Accordingly, we find that this factor favors an award to employees represented by the Laborers.

Conclusions

Upon the entire record in this case and the foregoing consideration of all relevant factors, we conclude that employees represented by Laborers are entitled to the work in question, and we shall determine the dispute in their favor. In making this determination, however, we are assigning the disputed work to the employees of H. M. Robertson Pipeline Constructors who are represented by Laborers 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:

Employees of H. M. Robertson Pipeline Constructors, who are currently represented by Local 1184, Southern California District Council of Laborers, are entitled to perform the work of installing and laying pipe and other related work at the jobsite in Desert Hot Springs, Riverside County, California.

⁶ Our decision herein should not be construed as reflecting upon the merits of the Plumbers contractual claim *vis-a-vis* the Employer.

⁷ Cf. *Plumbers & Steamfitters Local Union No. 189 (R. W. Wander, Inc.)*, 176 NLRB No. 129.