

New York Mailers Union Number 6, International Typographical Union, AFL-CIO and New York News Inc.

Newspaper and Mail Deliverers' Union of New York City and Vicinity and New York News Inc. Cases 29-CD-321 and 29-CD-322

30 April 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

The charge in this Section 10(k) proceeding was filed 15 August 1983 by the Employer, separately alleging that New York Mailers Union Number 6, International Typographical Union, AFL-CIO (Mailers) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Newspaper and Mail Deliverers' Union of New York City and Vicinity (Drivers) and, similarly, that Drivers violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign the same work to employees it represents rather than to employees represented by Mailers. The hearing was held 31 August 1983 before Hearing Officer William Shuzman and 23 September 1983 before Hearing Officer Jane B. Jacobs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officers' rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, a New York corporation, is engaged in the production, distribution, and sale of newspapers at various facilities, including its facility in Garden City, New York. The Company annually receives gross revenues from its publishing operations exceeding \$200,000, and holds membership in, and subscribes to, interstate news services, publishes nationally syndicated features, and advertises nationally sold products. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Drivers and Mailers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Company publishes and distributes the New York Daily News and the New York Sunday News. For many years the Company produced its various editions of the two newspapers at three plants located in Manhattan, Brooklyn, and Queens. In 1983 the Company constructed two satellite plants as part of a reorganization plan designed to modernize its facilities and print its editions closer to their distribution areas. When the new plants are completed and the Brooklyn plant modernized, the Company will transfer publication of all its city editions from Manhattan to Brooklyn, close the Manhattan plant, and transfer all suburban editions to the new satellite plants. When the satellite plant in Garden City commenced operations 15 August 1983, the Company began to publish part of its Nassau/Suffolk edition there. Although that edition is currently shared between the Brooklyn and Garden City plants, the Company will eventually transfer the entire edition to Garden City. The disputed work involves tying and wrapping of newspapers on Garden City's automated conveyor lines.

At the Brooklyn and Manhattan plants some of the conveyor lines leading from the printing presses are automated and some are not. On both lines newspapers leave the press and move to a stacker machine, which counts them and stacks them into bundles; a belt conveys the bundles to a wrapping machine which wraps the bottom of the bundles. The conveyor then takes them further along the line, where the employees manually place another wrapper on top of the bundles and, using a tying machine, tie each bundle with a plastic or wire tie. If the line is automated, the conveyor transports the bundles directly to loading docks. On nonautomated lines, however, employees manually remove the bundles from the tying machines and roll them on tables to distribution sites.

Historically, at the Company's Brooklyn plant, the wrapping and tying operation was shared between employees represented by both Unions. On runs designated "direct delivery," Drivers-represented employees wrapped and tied; on "indirect delivery" runs, Mailers-represented employees performed the work. Direct delivery involves newspapers which Drivers-represented routemen transport from the plant to retail newsdealers from whom the routemen collect remittance; indirect delivery involves newspapers that wholesalers obtain at the plant or at certain other locations such as hospitals or racetracks. Until 1957 the Company distributed its newspapers to newsdealers in certain parts of

Nassau and Suffolk counties through a wholesaler, Rockaway News Company. Mailers-represented employees wrapped and tied the newspapers because their delivery was indirect. In 1957 the Rockaway distributorship failed and the Company instituted direct delivery to the territory Rockaway had serviced.

Because of the change, the Company attempted to assign wrapping and tying work associated with the Nassau/Suffolk runs to Drivers-represented employees. The Mailers took the matter to arbitration and obtained an award assigning the work to employees it represents. For about a year the Company allowed those employees to wrap and tie bundles and Drivers-represented employees to break the tie, discard the wrappers, and rewrap and retie the same bundles. The Company then attempted to assign the work exclusively to Mailers-represented employees, but the Drivers in 1958 obtained an arbitration award prohibiting the reassignment. The Company, pincered between conflicting awards, returned to its practice of assigning the initial wrap and tie to Mailers-represented employees and a second wrap and tie to Drivers-represented employees. Dual justification, however, was limited to nonautomated lines at the Brooklyn plant because of the impracticability of retying the constantly moving bundles on automated lines.

When the Company transferred publication of the Nassau/Suffolk edition to Garden City's automated lines in August 1983, it assigned the work in dispute exclusively to Drivers-represented employees. A Drivers representative informed the Company that if that Union had not obtained jurisdiction over the work it would have engaged in a work stoppage. In an attempt to claim the work for employees it represents, the Mailers engaged in three work stoppages between 15 and 25 August. On 25 August a Federal court issued a temporary injunction against the work stoppages under Section 10(l) of the Act.

B. Work in Dispute

The disputed work involves the wrapping and tying of newspapers at the Company's Garden City, New York plant, which are delivered to points in Long Island by Drivers-represented employees and were formerly distributed through the Rockaway News Co.

C. Contentions of the Parties

The Company and Drivers contend that the work should be awarded to Drivers-represented employees based on the collective-bargaining agreement between those parties, company preference and past practice, and economy and efficiency

of operation. The Mailers Union concedes that Drivers has a legitimate claim to the work, but contends that the Mailers' claim is equally justified and that the Board therefore should either direct the Company to negotiate a solution to the dispute satisfactory to both Unions, or award the work on an alternating basis to both groups of employees.

D. Applicability of the Statute

The parties have stipulated that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that there is no agreed method to resolve the dispute. Both Unions continue to claim the disputed work, Drivers threatened a work stoppage if the work were reassigned to Mailers, and Mailers engaged in a series of work stoppages to obtain the work until a court enjoined the activity. We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

Both Unions' collective-bargaining agreements support colorable claims to the work. The Mailers' agreement, at section 3(b), defines Mailers jurisdiction "as covering all mailing work within the jurisdiction of the Union." Section 17 allows the Company control over the manner of wrapping or tying if the work is performed in accordance with section 3. As to the Drivers, the evidence is undisputed that the Union has historically retained jurisdiction over direct delivery wrapping and tying. Its collective-bargaining agreement specifies, in section 2-A.2, that bundles delivered by routemen "shall be tied with a wrapper made up by a member of the bargaining unit, or in the same manner as present practice . . . in all areas where there is direct de-

livery." Accordingly, we find that this factor does not favor an award to employees represented by either Union.

2. Company preference and past practice

The Company has assigned the work to Drivers-represented employees, who have traditionally performed wrapping and tying associated with all direct delivery at both the Company's Manhattan and Brooklyn plants. The only exception to the practice has been the shared jurisdiction over the former Rockaway distribution occasioned by conflicting arbitration awards. Accordingly, this factor favors an award to Drivers-represented employees.

3. Area and industry practice

The evidence is insufficient to establish an area or industry practice concerning the work in dispute. Accordingly, this factor favors assignment neither to Drivers-represented nor Mailers-represented employees.

4. Relative skills

Because the work requires no special skills, this factor does not favor assignment to either Drivers-represented or Mailers-represented employees.

5. Economy and efficiency of operation

The automated lines at the Garden City plant print approximately 200,000 newspapers each day, which constitute the entire Nassau/Suffolk edition. The Drivers Union has undisputed jurisdiction over wrapping and tying on approximately 120,000 of those newspapers. The remaining 80,000 constitute the former Rockaway distribution and involve the disputed work. If the work were awarded to Mailers-represented employees exclusively, or on an alternating basis, employees represented by Drivers would nonetheless have to remain on the job for wrapping and tying of the majority of the press run. Also, on the modernized Garden City lines there is no distinction at the tying machine between newspapers going to direct delivery accounts and newspapers going to accounts Rockaway News serviced before 1957. The only purpose of making this distinction would be to identify which parts of the press run Mailers-represented and Drivers-represented employees would wrap and tie. This system would detract from efficient, economical production. Accordingly, this factor favors an award to employees represented by Drivers.

6. Arbitration awards

The Mailers offers its 1957 arbitration award holding that, even though the Company serviced the Rockaway area directly rather than through a

wholesaler, Mailers retained jurisdiction over wrapping and tying work associated with that aspect of the Nassau/Suffolk edition. That award relied on contractual language still in effect, freezing jurisdiction over work historically held by Mailers-represented employees. The Drivers offers a 1958 tripartite arbitration award holding that the Rockaway distribution had become direct rather than indirect delivery and, as such, could not be removed from Drivers' jurisdiction. The latter award found, consistent with our view, that both Unions had contractual claims to the work, though in awarding the work the arbitration board added, "There is no denying that a duplication of work by two different sets of employees is both unnecessary and undesirable."

As noted, Garden City's fully automated operation differs substantially from the operation which gave rise to the arbitration decisions governing the Brooklyn plant. In 1972, however, the Company opened a new plant in Long Island City, New York, the "Newspoint" plant. The same tying work disputed here became in 1973 the subject of yet another arbitration, and that decision awarded the work to Drivers-represented employees. The chairman of the arbitration board held:

Despite the arbitration award also awarding the same work to the Mailers' Union, the undersigned is of the opinion that the Company's recognition of the Drivers' right to this work is properly substantiated. One of the touchstones in the division of the work under which the Mailers profited to a greater extent than the Drivers at Newspoint, was whether the delivery was direct or indirect. There is no question that today the [former Rockaway] deliveries are direct. For that reason, the work of tying for such deliveries should be given to the Drivers.

Although the three arbitration awards, like the conflicting jurisdictional language of the contracts, do not provide unequivocal guidance in this case, the 1973 award is addressed to the setting of a new plant and is most closely in point. We find that this factor favors an award to employees represented by Drivers.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Drivers are entitled to perform the work in dispute. We reach this conclusion relying on company preference and past practice, economy and efficiency of operation, and the 1973 arbitration award granting similar work to Drivers-represented employees. In

making this determination, we are awarding the work to employees represented by Drivers, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of New York News Inc. represented by Newspaper and Mail Deliverers' Union of New York City and Vicinity are entitled to perform the work of wrapping and tying of newspapers at the Company's Garden City, New York plant, which are delivered to points in Long Island

by Drivers-represented employees and were formerly distributed through the Rockaway News Co.

2. New York Mailers Union Number 6, International Typographical Union, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force New York News Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, New York Mailers Union Number 6, International Typographical Union, AFL-CIO shall notify the Regional Director for Region 29 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.