Local Lodge No. 374, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO and The Vogt and Conant Company and Local Union No. 395, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 25-CD-237

28 February 1985

DECISION AND DETERMINATION OF DISPUTE

By Chairman Dotson and Members Hunter and Dennis

The charge in this Section 10(k) proceeding was filed 15 June 1984 by the Employer, alleging that the Respondent, Boilermakers Local Lodge No. 374, 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 Iron Workers. The hearing was held 18 September 1984 before Hearing Officer Arroll A. Phipps.

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

I. JURISDICTION

The Company, an Ohio corporation, is engaged in the business of erecting structural steel, mechanical equipment, and overhead cranes from its regional office in Cleveland, Ohio, and annually performs contract work outside the State of Ohio valued in excess of \$50,000. It also purchases and receives materials directly from points outside the State of Ohio valued in excess of \$50,000 per year. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that Boilermakers Local Lodge No. 374 and Iron Workers Local No. 395 are labor organizations within the meaning of Section 2(5) of the Act. ¹

II. THE DISPUTE

A. Background and Facts of Dispute

In February 1984² the Company was awarded work as a subcontractor for the Missouri Boiler and Tank Company for the erection of structural steel and duct work in a building which comprises part of the Northern Indiana Public Service Company's R.M. Schahfer Generating Station in Wheatfield, Indiana. The building in question is part of a Flue Gas Desulphurization system known as Unit 18 (hereinafter FGD system).

At a prejob conference held on 9 April, Company Vice President and General Manager Fred P. Haas provided representatives of the Boilermakers and Iron Workers unions with copies of a letter he had prepared earlier, the pertinent portions of which follow:

I have discussed jurisdiction of the structural steel erection with both the Boilermakers and the Iron Workers. I have accumulated substantial historical information from each. The Boilermakers feel that any steel supporting duct work or breeching (which are not part of the building structure) should be assigned to the Boilermakers. The Iron Workers feel that any structural steel which is multi- purpose should be assigned to the Iron Workers.

... Vogt and Conant has the responsibility to erect F.G.D. building structures under a separate contract. The structures are supported by center columns provided under this contract. The structural steel in the . . . job supports electrical conduit, piping, stairs and walkways throughout the structure, under, above and on all sides of the duct. The center row of columns which support the duct also supports a monorail system at the top of the structure. The structural steel for this project is part of the building

It is not efficient nor economically wise to have separate trades plumbing and bolting steel columns, bracing and beams which interconnect, many with common bolts. To split the erection of the structure between two trades would be inefficient and not economical. . . .

Haas' letter concluded with the announcement that the Company was assigning the unloading and crection of the support steel, stairs, walkways, and monorail system to the Iron Workers and the unloading and installation of all duct work, slide

¹ There is no evidence in the record regarding the status of the two unions involved herein as labor organizations within the meaning of Sec 2(5) of the Act However, based on the following decisions in which Boilermakers Local 374 and Iron Workers Local 395, respectively, were found to be "labor organizations," we conclude that the Board's jurisditional standards have been satisfied American Ship Building Co, 142 NLRB 1362 (1963), and Iron Workers Local 395 (Telander Bros. Contractors), 196 NLRB 119 (1972)

² All dates are 1984 unless otherwise indicated

plates, dampers, expansion joints, and other like components to the Boilermakers. On learning of the assignments, Boilermakers' representatives informed Haas that they considered the erection of the structural steel on the FGD system to be their work and that the Union would "contest the assignment" and "follow whatever procedure was required to reverse the decision." On several occasions following the prejob conference. Haas unsuccessfully attempted to resolve the Boilermakers' claim that all the work contemplated by the subcontract should be assigned to employees it represents. In early May, Boilermakers Business Manager Clayton Lucas warned Haas that there would be problems on the job if the work assignments were not changed.

On 12 June the first shipment of steel arrived at the jobsite and, as planned, the material was unloaded by members of the Iron Workers. Although a Boilermakers business agent contacted Haas and informed him that "there were going to be problems" if the boilermakers were not allowed to unload the next load of steel. Haas refused to reassign the work. On 13 June the Boilermakers shut down all work on the site by arriving prior to starting time, setting up a picket line, and blocking the construction entrance gate with vehicles belonging to its members. When Haas contacted Lucas regarding the picket line, Lucas responded that the job would be shut down for 2 to 3 weeks unless Haas assigned all the work to the Boilermakers. Several hours later, however, the pickets dispersed after the Company agreed not to unload another shipment of steel for several days. Despite that agreement, a Boilermakers picket line was established again on the morning of 14 June and, although a few individuals crossed the picket line, no work was done that day.3 The Company filed unfair labor practice charges against the Boilermakers on 15 June and members of that Union thereafter returned to work. Progress on the project continued after that date without interruption.

B. Work in Dispute

The disputed work involves the erection of structural steel at Flue Gas Desulphurization Unit 18 of the R.M. Schahfer Generating Station in Wheatfield, Indiana.

C. Contentions of the Parties

The Employer and the Iron Workers contend that the work in dispute should be assigned to employees represented by Iron Workers Local 395,

arguing that the completed steel structure will be a multipurpose facility designed to support, in addition to duct work, several floors, walkways, stairs, ladders, piping, electrical equipment, hydraulic equipment, and fans. They further contend that the structural steel in issue is part of the building and not merely a breeching support. Finally, the Employer and the Iron Workers claim that the Employer's preference, economy, skills, and efficiency favor an award in favor of the Iron Workers.

The Boilermakers did not file an appearance at the hearing in this proceeding nor submit any evidence to support its position. Based on the record, however, it is evident that the Boilermakers considered the structural steel in question to be duct support material properly characterized as breeching supports. In seeking the assignment, the Boilermakers claimed that erecting breeching supports was work within its jurisdiction.

D. Applicability of the Statute

Before the Board may proceed with a determination of the 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 and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

No party contends that there is an agreed-upon method for voluntary adjustment of the dispute to which all parties are bound.

As stated above, Boilermakers Local 374 established and maintained a picket line at the Wheat-field, Indiana jobsite on learning that the Employer had assigned the disputed work to employees represented by another union. We find that an object of the Boilermakers' conduct was to force the Employer to assign the disputed work to employees it represents.

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.

³ The pickets reassembled the morning of 14 June despite a telegram from the president of the Boilermakers' International Union to Lucas on 13 June directing him to return the members to work immediately

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

There is no evidence that either the Boilermakers or the Iron Workers has been certified as the exclusive collective-bargaining representative of any of the Employer's employees. Likewise, there is no evidence that the Employer has at any time been a party to a collective-bargaining agreement with either Union.

Accordingly, we find that the certification and collective-bargaining agreement factors do not favor an award of the disputed work to employees represented by either the Boilermakers or the Iron Workers.

2. Company preference and past practice

Vogt and Conant has assigned all of the disputed work to employees represented by the Iron Workers since 9 April and prefers this assignment.

We find the Employer's assignment and preference favors an award to employees the Iron Workers represent.

3. Area and industry practice

Although there is some evidence in the record regarding the assignment of work by a competitor of the Employer responsible for the erection of structural steel for Unit 18 of the Wheatfield generating station, we find that evidence insufficient to favor an award of the disputed work to either group of employees.⁴

4. Relative skills

The Company argues that the skills required for the erection of structural steel are traditionally those of employees represented by the Iron Workers in that its members are trained to raise large pieces of steel, place them, fit up joints, bolt, and weld. The unrefuted evidence indicates that boiler-makers, on the other hand, are trained to fit duct work, build boilers and install boiler tubes, and weld tanks, boilers, and silos. The evidence further establishes that boilermakers generally do not unload, stack, or erect large pieces of structural

steel. We agree with the Employer and the Iron Workers that the boilermakers do not have the skills necessary to perform structural steel work of the magnitude contemplated by the subcontract involved here.⁵

Accordingly, we find that this factor favors assigning the disputed work to employees the Iron Workers represent.

5. Economy and efficiency of operations

The Employer maintains that it is more economical and efficient to have employees represented by the Iron Workers perform the disputed work because ironworkers are accustomed to handling structural steel, using chokers, limbing steel, and working off "floats" (scaffolding platforms tied off to steel structures). Boilermakers, on the contrary, prefer to work from "skip boxes" (baskets suspended from a crane) which practice is inefficient in that the crane being utilized for this function is thus unavailable for other uses. Further, the Employer contends that, whereas the ironworkers are trained to unload large truckloads of steel and stack the pieces so that they can be efficiently located when needed, boilermakers perform very little work of this sort.

Accordingly, we conclude that this factor favors an award to employees represented by the Iron Workers.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Ironworkers are entitled to perform the work in dispute. We reach this conclusion relying on relative skills, economy and efficiency of operations, and the Employer's assignment and preference. In making this determination, we are awarding the work to employees represented by Iron Workers, but not to that Union or its members. The current determination is limited to the particular controversy that gave rise to this proceeding.

⁴ The Employer acknowledged that there is no established company or industry practice regarding the erection of FGD systems. The only prior example of similar work was its competitor's experience with Unit 18. Although we are aware that on Unit 18 the boilermakers erected the center two lines of columns and the framing directly under the duct work, we have insufficient evidence to conclude that, given the differences in the structural compositions of the two buildings, the assignment of work on Unit 18 is indicative of an established "area practice".

⁵ According to the unrefuted testimony of Iron Workers Business Agent Fred G Summers, the Boilermakers' claim was based on a joint agreement between the Boilermakers and the Iron Workers dated 15 October 1928 which characterized breeching supports "which are not part of the building structure" as Boilermakers' work Summers explained that as technology improved and pollution controls increased, generating stations changed drastically and simple breeching supports (or two-legged stands supporting sections of duct work between smoke stacks) gave way to powerhouses several stories high containing electrical equipment, hydraulic systems and more, as described above We have reviewed Summers' testimony and documentation in the form of "jurisdictional decisions" submitted by the Boilermakers to the Company prior to the prejob conference (admitted into evidence during the hearing in this proceeding as Board exhibits), and find the evidence sufficient to support the Iron Workers' claim that the work in dispute is properly characterized as "part of the building structure" and not as breeching supports as argued by the Boilermakers

DETERMINATION OF DISPUTE

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

- 1. Employees of the Vogt and Conant Company represented by Local Union No. 395, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO are entitled to perform the structural steel erection work at the R.M. Schahfer Generating Station in Wheatfield, Indiana.
- 2. Local Lodge No. 374, International Brother-hood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO is not enti-

- tled by means proscribed by Section 8(b)(4)(D) of the Act to force the Vogt and Conant company to assign the disputed work to employees represented by it.
- 3. Within 10 days from the date of this Decision and Determination of Dispute, Local Lodge No. 374, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO shall notify the Regional Director for Region 25 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.