

**Warehouse Union Local 6, International Longshoremen and Warehousemen's Union and Golden Grain Macaroni Company and Local 125, Bakery, Confectionery and Tobacco Workers' International Union. Case 32-CD-82**

19 July 1985

**DECISION AND DETERMINATION OF DISPUTE**

**BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS**

The charge in this Section 10(k) proceeding was filed 5 October 1984 by Golden Grain Macaroni Company (the Employer), alleging that the Respondent, Warehouse Union Local 6, International Longshoremen and Warehousemen's Union (Local 6), 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 Local 125, Bakery, Confectionery and Tobacco Workers' International Union (Local 125). The hearing was held 16 November 1984 before Hearing Officer Ruby J. Palmer.

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 Employer, a California corporation with a wholly owned subsidiary, Ghirardelli Chocolate Company, is engaged in the processing and packaging of food products at its separate facilities in San Leandro, California. During the past calendar year, its business operations generated gross revenues in excess of \$500,000 and, during the same period, it purchased and received materials valued in excess of \$50,000 directly from points outside the State of California.

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 Local 6 and Local 125 are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

The Employer is a member of the Industrial Employers and Distributors Association (IEDA), which has a current collective-bargaining agreement with Local 6 covering all production, maintenance, and warehousing employees employed at the Golden Grain plant. The Employer by its

Ghirardelli division is also a member of the Confectioners' Council of East Bay, which has a collective-bargaining agreement with Local 125 recognizing its exclusive jurisdiction over production employees at the Ghirardelli plant.

In 1981 the Employer began manufacturing the Golden Grain stuffing mix. Local 6 workers were assigned the bread crumb packaging, and Local 125 workers packaged the spice pouch and combined the two packets (bread crumbs and spice) in the stuffing boxes. Plant Manager William Hoffman testified that in 1984<sup>1</sup> customer complaints revealed that an inconsistent percentage of finer as compared to larger pieces of bread crumbs were being packaged, producing a less appetizing product. According to Hoffman, the bread crumb packaging work was then transferred to the Ghirardelli plant because the Triangle machine there has two containers for dropping materials separately, eliminating the problem by sifting out the finer bread crumbs.

On 2 October the Employer met with Local 6 representatives to discuss the packaging of the Golden Grain stuffing mix. According to Personnel Manager John Sullivan, Local 6 maintained that the employees it represents were entitled to the work of packaging the bread crumbs. Local 6 proposed that such employees be allowed to do the work at the Ghirardelli facility or that the Triangle and Barteldt machines used to package the bread crumbs at Ghirardelli be moved to the Golden Grain facility. The Employer rejected the Union's proposals. Sullivan also testified that Al Lannon, president of Local 6, said, "The Union would do whatever they had to do to retain their work."

On 3 October Sullivan spoke with Virgil Cummings, president of Local 125, who claimed any work at the Ghirardelli plant for the employees it represents. On 4 and 5 October, Local 6 workers and union officials engaged in and caused a work stoppage at the Ghirardelli facility. They encircled the Barteldt machine, wrapped crepe paper around it, and placed a sign that said, "Unfair to Local 6." Sullivan also testified that Lannon said, "They were going to stay until they got their work back." No work stoppages have occurred since then.

*B. Work in Dispute*

The work in dispute is the packaging of bread crumbs for Golden Grain stuffing mix at the Ghirardelli Chocolate Company plant.

<sup>1</sup> All dates refer to 1984 unless otherwise noted

### C. Contentions of the Parties

In its brief Local 6 contends that no traditional jurisdictional dispute exists because its object was to preserve the work of employees it represents, relying on *Seattle Building Trades Council*, 204 NLRB 1126, 1127 (1973), and *Maritime Union*, 227 NLRB 1081, 1082 (1977). Local 6 further contends that the Board lacks jurisdiction because there exists an agreed-upon voluntary method of adjusting the underlying dispute. Local 6 argues that all three parties are contractually bound to enter into tripartite arbitration based on each union's arbitration provisions in their collective-bargaining agreements with the Employer.

On the merits, Local 6 maintains that the work in dispute should be awarded to employees it represents based on past practice and the Employer's contractual obligation to have Local 6 bargaining unit members produce and package Golden Grain products, notwithstanding agreed-upon limited exceptions in addenda to the collective-bargaining agreement.

The Employer contends that the disputed work should be assigned to employees represented by Local 125 because no Local 6-represented employee has ever performed production work at the Ghirardelli facility, and because Local 6's defense ignores the Employer's longstanding practice of having a limited interchange of work between the two facilities. Finally, the Employer argues that Local 6's work assignment demands are not limited to protecting work of employees within the Employer's Golden Grain collective-bargaining unit, but extends to asserting jurisdiction over work transferred to the Ghirardelli plant. In its brief, the Employer maintains that the disputed work should be assigned to employees represented by Local 125 based on efficiency, employer preference, product quality, economy, present assignment, and its collective-bargaining agreement with Local 125.

### D. Applicability of the Statute

Before the Board can determine 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 and that the parties have not agreed upon a voluntary adjustment of the dispute.

In this case, it is undisputed that Local 6 claimed the disputed work and engaged in and caused work stoppages at the Ghirardelli plant. Local 6 argues that no jurisdictional dispute exists because its sole object was work preservation.<sup>2</sup> We find this con-

tention unsupported by the record. The record establishes that the Employer's practice is to produce certain Golden Grain products in either of the two bargaining units. For example, the 1975 addendum prohibits the processing of Golden Grain products containing pasta in the Ghirardelli plant, but the 1979 addendum provides that certain types of rice and new products introduced after 1 June 1979 can be packaged in the Ghirardelli plant. The record also shows that Local 6-represented employees have never held production jobs in the Employer's Ghirardelli facility. Therefore, all work at the Ghirardelli plants, including any that has been transferred there, has been performed by employees represented by Local 125.

The work in question, though formerly performed at the Golden Grain plant, is now part of the operation of the Ghirardelli plant. The record shows that the packaging of the Golden Grain bread crumbs has significantly changed and is now performed by a new process. Before 1984, the bread crumbs were packaged on the Triangle machine at the Golden Grain plant. They were placed into a single container hopper that dispensed an inconsistent percentage of finer as compared to larger pieces of bread crumbs into the bread crumb pouch. The bread crumb pouches were then transferred to the warehouse before being sent to the Ghirardelli plant where they were combined with the spice pouch (containing herbs, dried vegetables, and rice), into a single box.

The packaging of bread crumbs is now part of a single integrated operation performed by Local 125-represented employees at the Ghirardelli plant. The new process entails packaging all ingredients for the Golden Grain stuffing mix on machines at the Ghirardelli plant. Now the bread crumbs are fed into the double hopper Triangle machine which separates the larger and finer pieces of bread crumbs before final packaging into pouches with an equalized distribution of finer and large crumbs. The bread crumb and spice packets are then combined on the Clybourne Horizontal packaging machine at the Ghirardelli plant. Thus, the evidence shows that the disputed work is now part of an integrated operation, and although the objective has remained the same, i.e., packaging the stuffing mix,

<sup>2</sup> Board found no real competing claims between two groups of employees because the disputes were with the employer and concerned the recapture of work for displaced employees. Here, by contrast, there are no displaced workers. Local 6 workers continue to manufacture and process Golden Grain products on the Triangle machine at the Golden Grain plant. Furthermore, Local 125-represented employees were assigned the work in dispute, Local 125 has not disclaimed the work, and Virgil Cummings, vice president of Local 125, testified that he wanted to continue to have Local 125-represented employees perform the work on the Triangle machine at the Ghirardelli plant.

<sup>2</sup> We reject Local 6's contention that no jurisdictional dispute exists under *Seattle Building and Maritime Union*, supra. In those cases the

"the means for accomplishing that objective have undergone a significant metamorphosis." *Longshoremen Local 62 (Chevron, U.S.A.)*, 237 NLRB 835, 837 fn. 3 (1978).

This is not a case in which Local 6 is attempting to protect and preserve work which has traditionally been performed by employees it represents. Rather, Local 6 is attempting to expand its traditional domain to work performed at the Ghirardelli plant. Personnel Manager Sullivan's uncontradicted testimony shows that one of Local 6's proposals was to have employees it represents perform the work in question at the Ghirardelli facility. We find, therefore, reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.<sup>3</sup>

We also reject the Respondent's contention that because the two involved Unions have respective contract arbitration provisions with the Employer, there exists a voluntary means for adjusting the underlying dispute. Although the Employer's respective contracts with the Unions contain provisions for the arbitration of disputes between the contracting parties, neither contract provides for tripartite arbitration. These circumstances do not provide "a method for binding all parties in a single proceeding." *San Diego Stereotypers Union 82*, 201 NLRB 893, 895 (1973).

Furthermore, Local 6 argues that its action in district court seeking to compel arbitration constitutes an agreed-upon method for the voluntary adjustment of the dispute. The Board has held, however, that a pending Section 301 suit does not constitute an agreed-upon method for voluntary adjustment of the dispute. *International Die Sinkers' Conference*, 197 NLRB 1250, 1252 (1972). 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 the dispute.

#### 1. Collective-bargaining agreements

The Employer currently has respective collective-bargaining agreements with Local 6 and Local 125. Both agreements were submitted into evidence. Neither contract, however, specifically covers the work in dispute.

The record also demonstrates that, since 1975, Local 6 and the Employer have entered into various agreements specifying which Golden Grain products could be manufactured in the Ghirardelli plant. In 1975 Local 6 and the Employer agreed that certain Golden Grain products would no longer be processed in the Ghirardelli facility. These products included specified rice products, cheddar cheese products, and Golden Grain products containing pasta. In 1979 the agreement was amended to provide that any new pasta product introduced after 1 June 1979 may be packaged on the Triangle machine at the Ghirardelli plant. The agreement also contained a general waiver that "any new product introduced after June 1, 1979" may be packaged at the Ghirardelli plant. This agreement was subsequently amended in 1981 and included a proviso allowing pasta products introduced after 1 June 1979 to be packaged at the Ghirardelli plant, but there was no general waiver provision.

The Employer argues that, because the bread crumbs are not a pasta product, they can be packaged at the Ghirardelli plant under either the 1979 or 1981 agreement. Although the Golden Grain stuffing mix was first manufactured in 1981, we find that neither agreement covers the disputed work or categorically assigns the packaging of bread crumbs to employees represented by Local 125. Therefore, because the collective-bargaining agreements and addenda do not clearly show which group of employees is entitled to perform the disputed work, we find that this factor is not helpful to a determination.

#### 2. The Employer's preference and past practice

From 1981 until 1984, the Employer used employees represented by Local 6 to package the bread crumbs at the Golden Grain plant. According to Plant Manager Hoffman, the Employer departed from this arrangement because of customer complaints that the bread crumbs were too finely ground. The Employer then assigned the disputed work to Local 125-represented employees because the Ghirardelli plant had the necessary equipment to remedy the problem. We find there is no past practice with regard to the packaging of bread crumbs at the Ghirardelli facility.

<sup>3</sup> We deny Local 6's motion to quash the notice of hearing. Chairman Dotson finds it unnecessary to rely on the above rationale utilized for rejecting Local 6's work preservation claim.

The Employer's preference is to have Local 125-represented employees perform the work in dispute. The Employer's preference, while not determinative, favors an award of the work to employees represented by Local 125.

### 3. Relative skills

No particular skill is necessary to perform the disputed work; therefore, this factor favors neither group of employees.

### 4. Economy and efficiency of operations

It is undisputed that the Golden Grain plant lacks the equipment to perform adequately the work in dispute, but Local 6 argues that the Triangle and the Barteldt machines could be moved to the Golden Grain plant from the Ghirardelli plant. Hoffman testified, however, that there was insufficient space in the Golden Grain facility to operate the work efficiently and that, because the Triangle machine is two stories high, construction of a second floor at Golden Grain would be necessary.

Under the present assignment, employees represented by Local 125 perform every function involved in processing and packaging the stuffing mix. The packaging of the spice pouch and the bread crumb pouch, and the placement of both packets in the stuffing mix boxes are handled by a single unit of employees. This new procedure eliminates the need for moving and storing the packaged bread crumbs by Local 6-represented employees. Before integrating the processing and packaging of the stuffing mix, the bread crumb bags were placed in large cartons which were palletized onto a pallet and driven by a forklift operator to the Golden Grain warehouse. The entire operation now is simultaneously performed on three machines that are proximately situated, providing for a more economical use of available floor space and a more continuous and efficient use of equip-

ment. Thus, the factor of economy and efficiency of the Employer's operations favors an assignment of the disputed work to employees represented by Local 125.

### Conclusion

After considering all the relevant factors, we conclude that the employees represented by Local 125 are entitled to perform the work in dispute. In reaching this conclusion, we have relied on the efficiency and economy resulting from such an assignment and the Employer's preference. In making this determination, we are awarding the work to employees represented by Local 125, 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 the Employer represented by Local 125, Bakery, Confectionery and Tobacco Workers' International Union are entitled to package the bread crumbs for Golden Grain stuffing mix at the Ghirardelli plant.

2. Warehouse Union Local 6, International Longshoremen and Warehousemen's Union is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Golden Grain Macaroni Company to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Warehouse Union Local 6, International Longshoremen and Warehousemen's Union shall notify the Regional Director for Region 32 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.