

**Road Sprinkler Fitters Local Union No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO and Grinnell Fire Protection Company, Inc. and Coal, Ice, Building Material, Supply Drivers, Riggers, Heavy Haulers, Warehousemen and Helpers Local Union No. 716, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. Case 25-CD-253**

August 24, 1989

**DECISION AND DETERMINATION OF DISPUTE**

**BY MEMBERS CRACRAFT, HIGGINS, AND DEVANEY**

The charge in this Section 10(k) proceeding was filed on May 30, 1989, by the Employer, alleging that the Respondent, Road Sprinkler Fitters Local 669, 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 Teamsters Local 716. The hearing was held on June 16, 1989, before Hearing Officer John Petrison. The Employer and Local 669 filed posthearing briefs.

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

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, Grinnell Fire Protection Company, Inc. (Fire Protection), a Delaware corporation, is a division of Grinnell Corporation (Grinnell) engaged in the fabrication and installation of fire sprinkler systems and components. Fire Protection has a fabrication facility in Indianapolis, Indiana, where it annually purchases and receives goods valued in excess of \$50,000 directly from points located outside Indiana. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Road Sprinkler Fitters Local 669 (Local 669) and Teamsters Local 716 (Local 716) are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

**A. Background and Facts of Dispute**

Grinnell Fire Protection and Grinnell Supply Sales (Supply Sales) are divisions of the parent Grinnell Corporation. Each division operates as a separate entity. As stated above, Fire Protection fabricates and installs custom fire protection systems for general contractors. Supply Sales is a wholesale distributor of components used in fire protection systems. Road Sprinkler Fitters Local 669 represents employees nationwide who are employed in Fire Protection's fabrication shops. Teamsters Local 716 represents employees employed by Supply Sales.

In 1988, Grinnell, the parent company, decided to house both a new fabrication shop of the Fire Protection division and a relocated, downsized operation for the Supply Sales division in a single new Indianapolis, Indiana facility. As part of the newly consolidated operation, Grinnell initiated an experimental inventory system in which the Teamsters-represented employees of Supply Sales would perform the work of stocking materials and picking inventory for use in Fire Protection's fabrication process. A similar experiment was already underway at facilities shared by Fire Protection and Supply Sales in Dallas, Texas, and in Fresno, California. Prior to this experiment, Road Sprinkler Fitters-represented employees of Fire Protection had performed this work in maintaining that Company's own in-house inventory.

Grinnell decided in the fall of 1988 that the experimental inventory control and supply system was not satisfactory. Accordingly, it terminated the experiment at Indianapolis and elsewhere. At Indianapolis, Fire Protection purchased its own inventory and assigned the inventory work to the fabrication shop employees represented by Local 669. Thereafter, Local 716 filed several grievances under its contract with Supply Sales seeking to reclaim that work. In anticipation of arbitration of those grievance claims, Local 669 sent a letter to Fire Protection on May 25, 1989, stating that:

Local 669 is prepared to take any lawful action which is necessary to retain our work. This action includes but is not limited to a strike at the fabrication shop in Indianapolis, picketing at this and/or other Grinnell facilities or job sites, and the revocation of Grinnell's right to use the U.A. label on its product.

### B. Work in Dispute

The disputed work involves the handling, stocking, storing, and pulling of materials (including yard work) for use by Grinnell Fire Protection Company, Inc., at its Indianapolis, Indiana fabrication shop.

### C. Contentions of the Parties

The Employer, Fire Protection, and Local 669 agree that reasonable cause exists to believe that Local 669 violated Section 8(b)(4)(D) of the Act; that no voluntary means exists for adjustment of the jurisdictional dispute; and that the work in dispute should be awarded to employees represented by Local 669 based on the factors of its collective-bargaining agreement with the Employer, the Employer's preference and past practice, area practice, and the economy and efficiency of operations.

Local 716 did not appear at the hearing and has not filed any statement in support of its claim that the work in dispute should be assigned to employees of Supply Sales who are represented by Local 716. Based on the grievances filed, Local 716 apparently believes that its contract with Grinnell Company, discussed below, proscribed the reassignment of the work in dispute after it had been assigned to employees of Supply Sales.

### D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k), 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 voluntary adjustment of the dispute. Based on Local 669's May 25, 1989 letter to the Employer threatening to engage in coercive strike and picketing action and to revoke the Employer's right to use the union emblem on its components if Fire Protection reassigned the work in dispute to employees represented by Local 716, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. Absent any contention or evidence to the contrary, we further find that there exists no agreed-on 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

No party claims there are certifications applicable to the work in dispute. Local 669 has a collective-bargaining agreement with the Employer, Fire Protection. Article 17, section B.2, of that agreement specifically covers the "unloading, handling, placing into stockpiles or bins the piping, valves, fittings, etc., as related to fabrication." Teamsters Local 716 has a collective-bargaining agreement with Grinnell Company covering Supply Sales employees at the Indianapolis facility shared with Fire Protection. This contract states generally that work "presently performed or hereafter assigned to the bargaining unit" cannot be subcontracted, transferred, or reassigned. Although Local 716's contract is with the Employer's parent company and does not specifically refer to the work in dispute, it arguably covers that work. Accordingly, we conclude that the factor of certifications and relevant collective-bargaining agreements does not favor an award of the work in dispute to either group of employees.

#### 2. Company preference and past practice

The Employer prefers that the work in dispute be performed by employees represented by Local 669. Prior to the brief experimental system involving consolidated inventory maintenance with Supply Sales, employees represented by Local 669 in all of Fire Protection's fabrication shops had historically been assigned the disputed work. The experimental system operated for only a few months and at present all the Employer's fabrication shops have reverted to the past practice in assigning the work in dispute. We find that this factor favors an award to employees represented by Local 669.

#### 3. Area practice

There is evidence about four other union-represented sprinkler fabrication shops in the area. In three of these shops, employees represented by Local 669 perform the work of maintaining the employer's own inventory. The other shop's employees are represented by the Teamsters. The record also shows that Local 669 has agreements with 26 fabrication shops in 13 States and in each of these plants the disputed work is performed by employ-

ees represented by Local 669. There is no evidence of any other employer having assigned in-house inventory work for a sprinkler fabrication shop to employees represented by the Teamsters. Therefore, this factor favors awarding the disputed work to the Employer's employees represented by Local 669.

#### 4. Relative skills

The evidence indicates that the work in dispute required only modest skills that could be learned in a 2-month period. Therefore, this factor does not favor either group of employees.

#### 5. Economy and efficiency

According to uncontradicted evidence, it is more economical and efficient to use employees represented by Local 669. The Employer testified that employees represented by Local 669 were cross-trained and that the Company could assign the employees to other work when inventory needs declined. The number of employees needed was less when the disputed work was assigned to employees represented by Local 669 than it had been when Supply Sales employees represented by Local 716 performed the work. Finally, after the brief inventory experiment with Supply Sales ended, the Employer experienced a substantial decrease in inventory delays and shipments of incomplete orders.

This factor favors awarding the disputed work to employees represented by Local 669.

#### Conclusions

After considering all the relevant factors, we conclude that employees represented by Road Sprinkler Fitters Local 669 are entitled to perform the work in dispute. We reach this conclusion relying on employer preference and past practice, area practice, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Road Sprinkler Fitters Local 669, 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.

Employees of Grinnell Fire Protection Company, Inc., represented by Road Sprinkler Fitters Local Union No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, are entitled to perform the handling, stocking, storing, and pulling of materials (including yard work) for use by Grinnell Fire Protection Company, Inc., at its Indianapolis, Indiana fabrication shop.