

Local 53, International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the U S and Canada, AFL-CIO and CBS Inc and Local 1212, International Brotherhood of Electrical Workers, AFL-CIO Case 1-CD-718

17 October 1984

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

The charge in this Section 10(k) proceeding was filed 23 April 1984 by the Employer, CBS Inc, alleging that the Respondent Local 53, IATSE (Local 53), 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 of the Employer represented by Local 1212 IBEW (Local 1212). The hearing was held 29 May 1984 before Hearing Officer Thomas J Morrison.

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 Company, a New York corporation, is engaged in interstate communications by radio and television, as well as other enterprises, from its principal office in New York City, where it annually receives from points outside of New York State goods valued in excess of \$50,000. It has annual revenues in excess of \$1 million. 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 53 and Local 1212 are labor organizations within the meaning of Section 2(5) of the Act.

II THE DISPUTE

A Background and Facts of Dispute

Approximately 2 weeks prior to the Employer's 25 February 1984 telecast of a National Collegiate Athletic Association (NCAA) basketball game at the Springfield Civic Center in Massachusetts, Douglas Fleetham, the Employer's field technical manager, spoke with Ken Shean, Local 53's business manager. Shean told Fleetham that he expected CBS to hire several Local 53 members to serve

as the pre broadcast, broadcast, and post broadcast technical crew. Specifically, Shean wanted CBS to hire one man on Thursday (23 February), four men on Friday and four men on Saturday the date of the telecast. CBS had intended to assign the field technical work to employees represented by Local 1212 pursuant to a collective bargaining agreement with IBEW and its locals. Fleetham told Shean that he would refer the matter to his superiors and get back to him.

Between approximately 13 and 17 February, Fleetham had several conversations with Shean in an attempt to convince him to agree to the hiring of fewer employees represented by Local 53. On or about 22 February, Fleetham asked Shean what the consequences would be if CBS attempted to broadcast the game without hiring members of Local 53. Shean told Fleetham that if this situation arose Local 53 would pull the sound man and the scoreboard operator from the building. Shean also told Fleetham at some point that very possibly you'll have some people outside the building that will be picketing or something like that. Fleetham discussed the situation with his superiors who decided that, in order not to jeopardize the telecast, CBS would hire the men Shean demanded be hired. Fleetham informed Shean that he was hiring the men under protest. The game was played and televised as scheduled.

B Work in Dispute

The disputed work involves the unloading of equipment from CBS trucks, the positioning of equipment at the site of the television transmission and the installing of temporary cable to such equipment at the Civic Center in Springfield, Massachusetts.

C Contentions of the Parties

The Employer contends with Local 1212 and the IBEW¹ in agreement that Local 53 violated Section 8(b)(4)(D) of the Act because it threatened to pull the sound man and the scoreboard operator from the Springfield Civic Center and to picket outside the Civic Center unless CBS hired employees from Local 53 to assist in the disputed work. In view of its collective bargaining agreement with Local 1212 employer and industry past practice, the specialized nature of the equipment, and the functional interchangeability of the CBS crew, the Employer asserts that the disputed work should be awarded to the members of Local 1212.

¹ Reginald Gilliam, an International representative of the IBEW, appeared at the hearing on behalf of the IBEW and testified in support of Local 1212's claim. The IBEW did not file a brief.

Local 53 contends that the disputed work should be awarded to its members on the basis of its contract with the Springfield Civic Center, past practice at the Civic Center the nonspecialized nature of the work, and because the work should be given to local Springfield technicians rather than to CBS employees without prior experience in the Springfield Civic Center

D *Applicability of the Statute*

The uncontradicted and undisputed testimony discloses that on or about 22 February Local 53 threatened to pull the sound man and the score board operator from the Springfield Civic Center and to picket outside the Civic Center unless CBS agreed to assign the work in dispute to employees represented by Local 53

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 US 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

Local 1212 is the certified representative of the CBS employees involved here CBS has a collective bargaining agreement with Local 1212 in effect which specifically gives jurisdiction of the disputed work to Local 1212 technicians, both in terms of the type of work to be performed and Local 1212's territorial jurisdiction, which is a 525 mile radius from a main studio The parties stipulated at the hearing that Springfield, Massachusetts, is within 525 miles of New York City

On the other hand Local 53 claims that its contract with the Civic Center controls the assignment of work The jurisdictional article in Local 53's contract states that [t]he parties hereto recognize that the Union claims jurisdiction over all [work]

recognized [as] traditionally falling within the jurisdiction of the Union in connection with all shows and attractions In addition, the parties recognize that the Union claims jurisdiction hereunder to cover all sound and lighting equipment in or out of The Center and moving same from one area to another Also agrees the Union claims jurisdiction hereunder to cover all sound, lighting, props and rigging in connection with all shows and attractions

From the record evidence it is clear that CBS, not the Civic Center, was the employer in control over the manner and means by which the telecast was to be made CBS collective bargaining agreement with Local 1212 clearly establishes the latter's jurisdiction over the work, whereas Local 53 has no such contract and arrangement with CBS In view of the explicit language in the collective bargaining agreement between CBS and Local 1212 we find this factor favors an award of work to the employees of the Employer who are represented by Local 1212

2 Company preference and past practice

The record discloses that CBS prefers to have its own employees perform the work in dispute, because the equipment is complex and expensive, and because CBS employees have the expertise and experience in handling it The record also reveals that the award by CBS of the disputed work to Local 1212 represented employees has a long tradition² Since 1969, the present section 1 03(m) of the IBEW contract with CBS, which awards this work to employees represented by Local 1212, has been included in the parties' contracts We also note in this context our decisions in *Stage Employees IATSE Locals 27 and 48 (CBS Inc)* 227 NLRB 142 (1976), and *Stage Employees IATSE Local 84 (CBS Inc)* 218 NLRB 1312 (1975) which awarded the same work as is in dispute here to employees of the Employer represented by Local 1212 We find that company preference and past practice favor an award of work to the employees of the Employer who are represented by Local 1212

3 Industry practice

Besides CBS, the other two major networks, ABC and NBC, generally assign the work in dispute to their own employees The collective bar

² Business Manager Shean testified that Local 53 members had performed the work in dispute for CBS Boston affiliate in covering the state Democratic conventions at the Springfield Civic Center in 1982 and 1983 There is however no evidence that CBS had any control over its contractual affiliate's broadcast CBS Vice President Stephen Koppekin stated that the Boston affiliate station is not covered by the IBEW contract

gaining agreement between NBC and the National Association of Broadcast Employees and Technicians, which represents the relevant NBC employees, permits NBC to utilize the services of employees of stadiums and arenas, if the particular stadium or arena has a contract with a local union. Insofar as the relevant collective bargaining agreements entered into by CBS and ABC with their own employees contain no such provision, we find that industry practice favors an award of work to the employees of the Employer who are represented by Local 1212.

4 Skills and efficiency of operations

A major concern of CBS is the proper care and use of its complex and expensive broadcast equipment. Its crews are customarily composed of approximately 20-23 technicians who are Local 1212 members and who perform interchangeable functions, including the work in dispute. Undisputed testimony indicates that the Local 1212 technicians are highly skilled in both maintaining and repairing the equipment involved. We find therefore that such employees of the Employer possess the necessary skills. Although there is no contention that Local 53 members are any less skilled to do the work in view of the specialized equipment involved and the demonstrated skills and training of CBS employees to do the work, this factor favors an award of the disputed work to the employees of the Employer who are represented by Local 1212.

Conclusions

After considering all the relevant factors we conclude that employees represented by Local 1212 are entitled to perform the work in dispute.

We reach this conclusion relying on the Employer's preference, the collective bargaining agreement between the Employer and Local 1212, the Employer's past practice and industry practice, and the skill, experience, and efficiency of the Employer's crew members represented by Local 1212 in the handling, maintenance and repair of the pertinent equipment. In making this determination, we are awarding the work to employees represented by Local 1212, 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 CBS Inc represented by Local 1212, International Brotherhood of Electrical Workers, AFL-CIO, are entitled to perform the work of unloading equipment from CBS trucks, the positioning of equipment at the site of the television transmission, and the installing of temporary cable to such equipment at the Civic Center in Springfield, Massachusetts.

2 Local 53, International Alliance of Theatrical Stage Employees, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force CBS Inc to assign the disputed work to employees represented by it.

3 Within 10 days from this date, Local 53, International Alliance of Theatrical Stage Employees, shall notify the Regional Director for Region 1 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.