

Laborers International Union of North America, Local No. 6 and Chicago Regional Council of Carpenters and Anderson Interiors, Inc. Case 13-CD-781

December 12, 2008

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). Chicago Regional Council of Carpenters (Carpenters) filed a charge on July 14, 2008, alleging that Laborers International Union of North America, Local No. 6 (Laborers) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing Anderson Interiors, Inc. to assign certain work to employees it represents rather than to employees represented by Carpenters. The hearing was held on September 2, 2008, before Hearing Officer Lisa Friedheim-Weis. Thereafter, Carpenters filed a posthearing brief in support of its position, and Laborers filed a brief in support of its motion to quash the notice of hearing.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, we make the following findings.¹

I. JURISDICTION

Anderson Interiors (Anderson), an Illinois corporation, is engaged in the business of installing flooring material. During the calendar year preceding the hearing, a representative period, Anderson purchased and received at its Antioch, Illinois facility goods and materials valued in excess of \$50,000 directly from points located outside the State of Illinois. Accordingly, Anderson is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Furthermore, based on the parties' stipulation, Carpenters and Laborers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

Anderson installs hardwood flooring material at various project sites in the Chicago metropolitan area.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

Anderson assigns its employees the tasks of unloading, handling, preparing, and installing its flooring material. At all times relevant, Anderson was a signatory to a collective-bargaining agreement with Carpenters;² it has never entered into a collective-bargaining agreement with Laborers.

As is its practice, Anderson assigned the installation of hardwood flooring at its 757 Orleans Street project to its employees, who are represented by Carpenters. The project commenced in June or July 2008. At that time, an employee for the general contractor of the project warned Anderson's superintendent that Laborers "would be there waiting for" them. According to the superintendent, members of Laborers approached him and his co-workers as they unloaded their truck, asked to see their union cards, and inquired about their wages. Laborers' steward then told them "that's Laborers' work . . . [and to] stop until they sort it out." Also at that time, a business agent for Laborers told a business agent for Carpenters that there was "an area standards issue" on the project. Laborers' agent also claimed the unloading work, according to Carpenters' agent. When asked whether Laborers' agent threatened to set up an area standards picket, Carpenters' agent testified, "That would be your interpretation of what a threat it [sic]. He told me to do what I got to do and I told him you do what you got to do." Approximately 1 week later, Laborers picketed Anderson. The picket signs read, "On strike against Anderson Interiors for Area Standards." Several other unions refused to cross the Laborers' picket line. The picket lasted for 1 day.

B. Work in Dispute

According to Carpenters and Anderson, the work in dispute includes: "All unloading and handling of hardwood flooring materials located at 757 Orleans Street in Chicago, Illinois by the employees of Anderson Interiors, Inc." Laborers, however, argues that the work in dispute should be limited to just the "unloading" of such flooring materials.

While the Board may narrow the scope of the work in dispute, see *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1138 (2005), the facts do not warrant such a ruling in this case. Admittedly, Laborers verbally demanded only the "unloading" work. However, the record reveals the difficulty in distinguishing between "unloading" and "handling." A business agent for Carpenters attempted to articulate a distinction: "You

² The collective-bargaining agreement and addendum thereto introduced into evidence expired on May 31, 2008. However, the record indicates that the parties entered into a successor agreement and that the relevant provisions are the same in both agreements.

unload [the hardwood flooring] off the truck to the dock. Then you *handle* it from the dock to the floor. Then you *stage* it from the floor to the area.” (Emphasis added.) It would appear from this testimony that “unloading” and “handling” are two separate and distinct stages in the preinstallation process. Immediately preceding this statement, though, the agent acknowledged that the term “handling” could be more broadly interpreted to include the “unloading” work—“Well, we use it unloading, handling, because you are handling the product.”

To fully resolve this matter and avoid future disputes, we adopt the definition of the work in dispute as advocated by Carpenters and Anderson.

C. Contentions of the Parties

Carpenters first contends that Section 10(k) applies to this case. It argues that Laborers claimed the work in dispute. It further argues that there is reasonable cause to believe that Laborers violated the Act when it picketed to enforce its claim. Carpenters also maintains that no voluntary adjustment mechanism exists. As to the merits of the dispute, Carpenters contends that the work in dispute should be assigned to the employees it represents based on the following factors: collective-bargaining agreements, employer preference and past practice, area practice, relative skill and experience, and economy and efficiency of operations. Carpenters finally requests an area-wide award.

Although Anderson did not file a posthearing brief in this case, its representatives testified at the hearing and supported Carpenters’ contentions that Section 10(k) applies to this case and that, based on the above factors, Anderson’s employees, who are represented by Carpenters, should be assigned the work in dispute.

Laborers moves to quash the notice of hearing.³ In its motion filed at the hearing, it argues that it did not claim the work in dispute and did not engage in proscribed activity. It also argues in its motion, and in its posthearing brief, that the parties are bound to an alternative method of adjustment. After the hearing officer denied the La-

borers’ motion to quash, it withdrew from the hearing and did not contest the merits of the dispute.⁴

D. Applicability of the Statute

Before the Board may determine a dispute pursuant to Section 10(k), there must be reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. *R&D Thiel*, 345 NLRB at 1139. This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work among rival groups of employees and that a party has used proscribed means to enforce its claim to the work in dispute. *Id.* Additionally, the Board will not proceed under Section 10(k) if there is an agreed-upon method for voluntary adjustment of the dispute. *Id.*

1. Competing claims for work in dispute and proscribed means

Laborers asserts that it did not claim the work in dispute and did not employ proscribed means. Instead, it contends that it inquired about, and picketed to enforce, area standards. Such picketing is permissible under Section 8(b)(4)(D). *Sheet Metal Workers Local 19 (E. P. Donnelly, Inc.)*, 345 NLRB 960, 962 (2005). Laborers, therefore, urges the Board to sustain its motion to quash.

Laborers may have desired to protect area standards. Members of Laborers did inquire about that subject, and its picket signs were limited to area standards. “However, even where one object of picketing is to protect area standards, if the evidence shows reasonable cause to believe that another objective of the picketing is to obtain disputed work, that is sufficient to bring the union’s conduct within the ambit of Section 8(b)(4)(D).” *Id.* Such evidence exists here. Laborers twice demanded at least a portion of the work in question, and it picketed approximately 1 week after it made these claims. Based on these facts, we find there is reasonable cause to believe that Laborers claimed the work in dispute and that at least one objective of the picketing was to obtain that work. See generally *E. P. Donnelly, Inc.*, *supra*.

2. No voluntary method for adjustment of dispute

Laborers also urges the Board to quash the notice of hearing because it believes that all parties are bound to a voluntary method of adjustment, namely, the Chicago & Cook County Building & Construction Trades Council Joint Conference Board (JCB). Both unions agree that, by virtue of their memberships in the Chicago & Cook County Building & Construction Trades Council (Council), they are bound by the standard agreement between the Construction Employers’ Association and the Coun-

³ Although Laborers did not directly raise the issue in its motion to quash, Carpenters states in its posthearing brief that Laborers twice attempted to disclaim the work in dispute. “[T]he party raising the issue that a disclaimer eliminates the existence of a jurisdictional dispute” bears the burden of proof. *Operating Engineers Local 150 (Interior Development, Inc.)*, 308 NLRB 1005, 1006 (1992). Moreover, for a disclaimer to be effective, it must be “a clear, unequivocal, and unqualified disclaimer of all interest in the work in question.” *R&D Thiel*, 345 NLRB at 1139. Laborers failed to satisfy its burden. The only evidence in the record is the following statement by counsel for Laborers: “We’re not filing a disclaimer. We’re submitting a disclaimer for purposes of this proceeding because, because we’ve submitted a motion which I will address on the record in a moment.” Such a statement is not a clear, unequivocal disclaimer of work.

⁴ Despite this, we will address the merits. See, e.g., *Iron Workers Local 112 (Freesen, Inc.)*, 346 NLRB 953, 955 fn. 5 (2006).

cil to submit all jurisdictional disputes to the JCB. The argument in this case centers on whether or not Anderson is bound to the JCB.

It is well settled that the Board will not hear a dispute when all of the parties are bound to an alternative method of adjustment. *R&D Thiel*, 345 NLRB at 1140. In order to determine if the parties are bound, the Board carefully scrutinizes the agreements at issue. See, e.g., *Elevator Constructors Local 2 (Kone, Inc.)*, 349 NLRB 1207, 1209–1210 (2007); *Sheet Metal Workers Local 292 (Galagher-Kaiser Corp.)*, 264 NLRB 424, 428–430 (1982).

Contrary to Laborers' contention, Anderson is not bound to the JCB. To establish Anderson's connection to the JCB, Laborers looks to Anderson's involvement with another project in Chicago—the Trump International Hotel and Tower (Trump Tower). For that project, the Trump Organization entered into a Project Labor Agreement (PLA) with the unions affiliated with the Council. The PLA binds its parties to the JCB. Anderson is a subcontractor on the Trump Tower project and is thereby bound to the PLA. However, the subcontract and the PLA itself make clear that they only apply to Anderson's work on the Trump Tower project.⁵ Therefore, they cannot bind Anderson to the JCB for the current dispute. Additionally, Laborers cannot rely on Anderson's collective-bargaining agreement with Carpenters to bind Anderson to the JCB for the instant dispute because that agreement mentions neither the standard agreement nor the JCB.

In sum, we conclude that there are competing claims for the work in dispute, that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, and that no agreed upon method for voluntary

adjustment of the dispute within the meaning of Section 10(k) exists in this case. Based on the foregoing, we hold that the dispute is properly before us for determination, and, accordingly, we deny Laborers' motion to quash the notice of hearing.

E. Merits of the Dispute

The grant of authority in Section 10(k) for the Board to “hear and determine” jurisdictional disputes requires the Board to make an affirmative award of the disputed work to one of the groups of employees involved in the dispute. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 579 (1961). While the Act does not set out the standards the Board is to apply in making this determination, the Supreme Court has explained that “[e]xperience and common sense will supply the grounds for the performance of this job which Congress has assigned the Board.” *Id.* at 583. Consistent with the Court's opinion, the Board announced in *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962), that in making the determination that the Supreme Court found was required by Section 10(k), the Board would consider “all relevant factors,” and that its determination in a jurisdictional dispute would be an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. See *R&D Thiel*, 345 NLRB at 1140–1141.

We have considered the following relevant factors, and, for the reasons set forth below, we conclude that Anderson's employees, who are represented by Carpenters, are entitled to perform the work in dispute. In making this determination, we emphasize that we are awarding the work to Anderson's employees, who are represented by Carpenters, not to that Union or its members.

1. Certifications and collective-bargaining agreements

There is no evidence of any Board certifications concerning the employees involved in this dispute. Thus, we find the factor of Board certifications does not favor awarding the disputed work to employees represented by either union. However, the collective-bargaining agreement between Anderson and Carpenters covers the work in dispute,⁶ and Anderson does not have a collective-bargaining agreement with Laborers. Thus, the factor of

⁵ Anderson's subcontractor agreement states, in pertinent part: “[Anderson] understands that the [PLA] is in place specific for [the Trump Tower] project with the local trade unions and that compliance with this agreement for labor provided in this scope of work is included.” (Emphasis added.)

The PLA states, in pertinent part, “This Agreement is made . . . between the Trump Organization for and on behalf of the contractors and subcontractors performing work within the scope of this Agreement . . . and each of the labor organizations affiliated with the Chicago & Cook County Building & Construction Trades Council.” (Emphasis added.)

In *Plasterers Local 478 (J.L. Manta, Inc.)*, 264 NLRB 171 (1982), a case cited by Laborers, the Board determined that a subcontractor was bound by a jurisdictional dispute resolution procedure negotiated by the general contractor. That case, however, is distinguishable. First, the subcontractor in *J.L. Manta* had to comply with “all the provisions of any” agreement executed by the general contractor, including provisions concerning settlement of jurisdictional disputes. *Id.* at 172. Here, conversely, the Trump Tower's subcontract has project-specific language. Second, the agreements in *J.L. Manta* concerned only one project. In this case, however, Laborers tries to apply the agreements from one project—the Trump Tower—to a wholly different project—757 Orleans Street.

⁶ Art. I of the collective-bargaining agreement states that the bargaining unit includes those employees engaged in “the handling, erecting, and installing material on any of the above divisions or subdivisions” of the trade. Art. XXV of the collective-bargaining agreement, which specifically covers installers of floor and wall products, includes the “handling, distributing and unpacking” of wood flooring material. Finally, an addendum to the collective-bargaining agreement provides, in pertinent part, “A Helper on residential or commercial jobsites may unload, and distribute all floor covering related material . . .”

collective-bargaining agreements favors awarding the work in dispute to the employees represented by Carpenters.

2. Employer preference and past practice

Anderson, in accordance with its preference and practice, assigned the disputed work to employees represented by Carpenters. Thus, we find this factor favors awarding the disputed work to the employees represented by Carpenters.

3. Area practice

Carpenters presented testimony from two witnesses—Anderson’s project coordinator and Carpenters’ business agent—that employers in the Chicago area typically assign the unloading and handling of hardwood flooring material to employees represented by Carpenters. Thus, this factor weighs in favor of awarding the work in dispute to the employees represented by Carpenters.

4. Relative skill and experience

Carpenters presented testimony that its members are specifically trained for, and particularly skilled at, performing the work in dispute. Carpenters requires preapprentices and apprentices to attend training programs that include instruction on proper material unloading and handling methods. Carpenters also offers continuing education and certification programs in material handling. According to Carpenters, training on proper unloading and handling procedures promotes workplace safety, reduces damage to the flooring material, and ensures that necessary preinstallation procedures are followed. There is no evidence regarding the skills or experience of employees represented by Laborers. Thus, this factor weighs in favor of awarding the work in dispute to the employees represented by Carpenters.

5. Economy and efficiency of operations

Carpenters presented testimony that employees represented by it perform the unloading and handling work more efficiently than employees represented by Laborers. Anderson’s superintendent testified, “One, we know the material. We know how to handle it. We know where to stage it.” Anderson’s project coordinator similarly testified that carpenters are familiar with the work and are skilled at performing it. According to the project coordinator, by having the same employees unload, distribute, and install the material, Anderson can “[s]ave time, labor . . . because [the carpenters] know exactly what’s going on in the job . . . They’re part of the crew.” “The Laborers’ [, on the other hand,] are doing other things during the day. . . . [T]hey don’t know our product. They don’t know what goes with our product,” according to the project coordinator. Thus, this factor weighs in favor

of awarding the work in dispute to the employees represented by Carpenters.

Conclusion

After considering all the relevant factors, we conclude that Anderson’s employees, who are represented by Carpenters, are entitled to continue performing the work in dispute at the jobsite that gave rise to this dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, area practice, relative skill and experience, and economy and efficiency of operations. In making our determination, we award the work to Anderson’s employees, who are represented by Carpenters, not to that labor organization or its members.

Scope of Award

“Normally, [Section] 10(k) awards are limited to the jobsites where the unlawful [Section] 8(b)(4)(D) conduct occurred or was threatened.” *Carpenters (Prate Installations, Inc.)*, 341 NLRB 543, 546 (2004). However, Carpenters seeks an areawide award.

For the Board to issue a broad award, two prerequisites must be met—there must be: “(1) evidence that the disputed work has been a continuous source of controversy in the relevant geographic area and that similar disputes may recur; and (2) evidence demonstrating the offending union’s proclivity to engage in further unlawful conduct in order to obtain work similar to that in dispute.” *Id.* When evaluating these prerequisites, the Board looks to the offending union’s other conduct. See *Electrical Workers Local 98 (Lucent Technology)*, 338 NLRB 1118, 1122 (2003); *Electrical Workers Local 98 (Swartley Bros. Engineers)*, 337 NLRB 1270, 1273 (2002).

To support its request, Carpenters cites four recent incidents between itself and Laborers. Based upon the documentary evidence attached to Carpenters’ posthearing brief and/or the posthearing brief itself, all four incidents appear to concern unloading work. The first incident occurred at the University of Chicago in June 2008. Laborers allegedly picketed the employer, ISEC, in order to force it to reassign the work in question. Region 13 scheduled a 10(k) hearing on July 22, 2008. The afternoon before the hearing, Laborers disclaimed the work. Carpenters provided no further information. The second and third incidents, which both occurred in September 2008, involved the Trump Tower project and the Alexian Brothers Medical Center project, respectively. In both incidents, Laborers allegedly threatened to file a grievance against the general contractor because of its respective subcontractor’s assignment of work. Finally, the fourth incident, which occurred in August 2008, involved

a project at Dearborn and Kinzie Streets in Chicago. In that incident, Laborers filed a grievance directly against the employer who assigned the work in dispute.

Carpenters' request for an area-wide award is without merit. At the least, it failed to show Laborers has a proclivity to engage in unlawful conduct to obtain work similar to that in dispute here. Carpenters provided insufficient information for us to adequately review the first incident. Regarding the second and third incidents, the Board has held that "a union's effort to enforce a lawful union signatory subcontracting clause against a general contractor through a grievance, arbitration, or court action does not constitute a claim to the subcontractor for the work." *Iron Workers Local 1 (Goebel Forming)*, 340 NLRB 1158, 1160 (2003). Regarding the fourth incident, the Board has held that "the mere filing of an arguably meritorious grievance is not unlawful conduct within the meaning of Section 8(b)(4)(D)." *Bricklayers Local 20 (Altounian Builders)*, 338 NLRB 1100, 1101 (2003). Carpenters failed to provide any evidence that Laborers' grievance did not arguably have merit or that Laborers did more than merely file a grievance.

Accordingly, we shall limit the present determination to the work jurisdiction dispute that gave rise to these proceedings.

III. DETERMINATION OF DISPUTE

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

(1) Employees of Anderson Interiors, Inc. who are represented by Chicago Regional Council of Carpenters, are entitled to unload and handle hardwood flooring materials at Anderson's jobsite located at 757 Orleans Street in Chicago, Illinois.

(2) Laborers International Union of North America, Local No. 6 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Anderson Interiors, Inc. to assign the disputed work to employees represented by it.

(3) Within 14 days from this date, Laborers International Union of North America, Local No. 6 shall notify the Regional Director for Region 13 in writing whether it will refrain from forcing Anderson Interiors, Inc. by means proscribed by Section 8(b)(4)(D) to assign the disputed work in a manner inconsistent with this determination.