

**Carpenters District Council of Denver & Vicinity, AFL-CIO
and J. O. Veteto and Son.** *Cases Nos. 27-CD-46 and 27-CD-46-2. April 30, 1964*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the Act following charges filed by Wood, Wire and Metal Lathers, Local Union 68, AFL-CIO, herein called the Lathers, and by J. O. Veteto and Son, herein called the Employer, alleging that Carpenters District Council of Denver & Vicinity, AFL-CIO, herein called the Respondent, had induced and encouraged employees to strike for the purpose of forcing or requiring the Employer to assign particular work to members of the Respondent rather than to members of the Lathers. A hearing was held before Hearing Officer Allison E. Nutt on December 19 and 20, 1963. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. The Respondent and the Lathers filed briefs which have been duly considered.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

Upon the entire record in this case, the Board makes the following findings:

1. The business of the Employer

J. O. Veteto and Son is engaged in the lathing and plastering business in Colorado and adjoining States. In the calendar year of 1962, Veteto performed services in the State of Wyoming valued at more than \$100,000 and, in the calendar year of 1963, purchased materials valued at more than \$100,000 from suppliers in Colorado, who received the goods from manufacturers located in other States. We find that Veteto is engaged in commerce within the meaning of the Act.

2. The labor organizations involved

Respondent and the Lathers are labor organizations within the meaning of Section 2(5) of the Act.

3. The dispute

The Work in Issue

Metal studs used in the erection of interior walls or partitions receive a surface of either plaster or dry wall material. The work in dispute

146 NLRB No. 133.

here is the installation of metal studs which are to receive dry wall material.

The Basic Facts

The Employer has a subcontract to install inside partitions in the Security Life Building, a 31-story office building under construction in Denver, Colorado. Contract specifications call for installation of nailable or screwable steel studs to be covered by gypsum board or other dry materials. The studs are installed by placing metal tracks on floors and ceilings, into which vertical steel studs are placed and secured in position with screws or nails, after which the covering material is applied with either nails, screws, clips, or wires.

The Employer has a collective-bargaining agreement with the Lathers and does not employ carpenters. On about October 1, 1963, the installation of metal studs was assigned to employees who were members of the Lathers. A week later a representative of Respondent contacted the Employer and claimed the work in question for members of his union. On November 15, at which time no studs were being installed, the National Joint Board for Settlement of Jurisdictional Disputes awarded the disputed work to the carpenters. The Employer not only had not joined in the submission of the dispute to the Joint Board but later affirmatively indicated its resolution not to be bound by the award of the Joint Board. Erection of metal studs was resumed by the lathers on December 4, 1963, and Respondent picketed the jobsite. Carpenters left the job when the pickets appeared but the lathers continued to work until all studding previously laid out had been installed. The general contractor asked the Employer to delay further installation of metal studs while the general contractor would attempt to resolve the dispute. Up to the time of hearing no further studs had been installed.

Contentions of the Parties

Respondent claims the disputed work of installing metal studs which are to receive dry wall covering on the basis of a 1962 agreement between the two International Unions herein concerned which, assertedly, is still in effect and recognizes that work of the type in dispute belongs to carpenters. It also relies upon the November 15, 1963, decision of the National Joint Board for Settlement of Jurisdictional Disputes. Respondent further contends that its claim is supported by area and industry practice and that installation of studding is a traditional function of carpenters.

The Lathers similarly relies upon area and industry practice to support its claim and contends that installation of steel studding is an integral part of the lather's trade which should be performed by lathers regardless of the type of material to be attached to the studs.

The Employer states that the work has been assigned to lathers because he does not employ carpenters; that since the work is intermittent it would be inefficient to replace the lathers, who can perform it when not otherwise occupied; and that his collective-bargaining agreement with the Lathers requires the assignment of the work to that Union.

Applicability of the Statute

Charges herein allege a violation of Section 8(b)(4)(D) of the Act. The record shows, and Respondent does not deny, that, on about December 4, 1963, when the Employer began installation of metal studs erected by Lathers, and refused to comply with the award of the National Joint Board, Respondent commenced picketing the job with signs stating that the Employer had no agreement with Respondent. Picketing ceased only when the Employer agreed to delay performance of the disputed work. Respondent concedes, for the purposes of this proceeding, that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

We find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that the dispute is properly before the Board for determination under Section 10(k) of the Act.

Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work, after giving due consideration to various relevant factors. The following factors are asserted in support of the claims of the parties herein:

1. *Collective-bargaining agreements*: Lathers and the Employer have a collective-bargaining agreement covering the employees to whom the Employer assigned the work in dispute. Respondent has no contract with the Employer, who has never employed carpenters. Lathers contends that its agreement specifically covers the work in dispute. However, similar contract language has heretofore been considered by the Board¹ and it was held that, although it refers to the installation of certain metal studs, it does not treat specifically with metal studs which are to receive a dry wall covering.

2. *Company, area, and industry practice*: Although both disputants offered considerable evidence on area and industry practice, the results of their efforts are inconclusive. Since the Employer has never employed carpenters and has used lathers exclusively for installing metal studs, the assignment of this work to the lathers is in accord with the Employer's past practice.

¹ Local 964, *United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Carleton Brothers Company)*, 141 NLRB 1138.

3. *Efficiency of operation:* It is not contended that either lathers or carpenters lack the skills or ability to erect metal studs. The Respondent, however, does not claim the right to install all steel studs to be used in the building; its demand is limited to only such steel studs as will receive a dry wall covering. In addition, Respondent does not lay claim to installation of either the floor and ceiling runners to which the studs are attached or to the furring channels or stiffeners which are inserted into and across the steel studs. Performance of the disputed work by the Respondent would, therefore, necessitate the division of the entire operation of preparing a wall area for its finishing covering between two craft groups with one installing the runners and furring and the other installing only the studs in each partition designed to receive dry wall covering. Clearly, the installation of floor and ceiling tracks, metal studs and bracing material is performed more efficiently when done as a continuous, integrated operation by a single craft group. The Employer's assignment of the disputed work to lathers is therefore consistent with efficiency of operation in the erection of interior partitions.

4. *Action of the Joint Board:* Both unions cite numerous decisions of the National Joint Board to support their claim to the disputed work. In addition, Respondent urges that in the instant dispute the Joint Board, in its decision issued on November 15, 1963, has awarded the work to it. The Employer, however, had not agreed to be bound by a decision of the Joint Board in this matter, and the decision by that body is merely one of the factors which we must consider in assigning the disputed work.²

5. *The Interim Agreement:* The Respondent relies heavily upon the Interim Agreement of January 6, 1962, between international representatives of the contending organizations, which purports to divide the disputed work between lathers and carpenters by assigning to carpenters, "The installation of metal studs—nailable or nonnailable—to receive finished material other than plaster or sprayed-on or trowel-applied materials done by Plasterers" Respondent contends that this Interim Agreement, which the Lathers contends has in fact been abrogated by the parties thereto, should be dispositive of the instant dispute, as it was in the recent case of *Acoustics & Specialties, Inc.*³ It appears, however, that the *Acoustics* case is a distinguishable one. In according determinative weight to the Interim Agreement in *Acoustics*, the Board noted that the criteria which had been determinative in most jurisdictional dispute cases previously decided were not present there and in that "state of balance" it considered it ap-

² See *Local 964, United Brotherhood of Carpenters and Joiners of America, AFL-CIO*, footnote 1, *supra*.

³ *Local Union No. 68, Wood, Wire and Metal Lathers International Union, AFL-CIO (Acoustics & Specialties, Inc.)*, 142 NLRB 1073.

propriate to give effect to the Interim Agreement. Clearly, the "state of balance" which imparted decisive impact to the Interim Agreement in *Acoustics* does not obtain here. Even assuming it to be still in force, therefore, the Interim Agreement is not entitled to the controlling effect accorded it in *Acoustics*.⁴

Conclusion as to the Merits of the Dispute

Upon consideration of all pertinent factors appearing in the entire record we shall assign the work in dispute to the lathers. They are as skilled in the performance of the work as the carpenters who compete for it and have performed it to the satisfaction of the Employer, who desires to retain them on the job. The present assignment of the disputed work to the lathers is consistent with their collective-bargaining agreement with the Employer, it conforms to the Employer's past practice, and the efficiency with which the lathers may accomplish the integrated task of preparing partitions for final covering in a single sequential operation demonstrates the superior claim of the lathers to the disputed work. We conclude that the Employer's assignment of the work to the lathers should not be disturbed. We shall, accordingly, determine the existing jurisdictional dispute by deciding that lathers, rather than carpenters, are entitled to the work in dispute. In making this determination, we are assigning the disputed work to the employees of the Employer who are represented by the Lathers but not to that Union or its members.

DETERMINATION OF DISPUTE

Upon the basis of the foregoing findings and the entire record in this proceeding, the Board makes the following determination of dispute pursuant to Section 10(k) of the Act:

1. Lathers employed by J. O. Veteto and Son, who are represented by Wood, Wire and Metal Lathers Local Union No. 68, AFL-CIO, are entitled to perform the work of erecting metal studs to receive dry wall on interior partitions in the Security Life Building in Denver, Colorado.

2. Carpenters District Council of Denver and Vicinity, AFL-CIO, is not entitled, by means proscribed by Section 8(b) (4) (D) of the Act, to force or require the Employer to assign the above work to carpenters.

3. Within 10 days from the date of this Decision and Determination of Dispute, Carpenters District Council of Denver & Vicinity, AFL-

⁴ For the reasons stated in his dissenting opinion in *Acoustics & Specialties, Inc., supra*, in which he disagreed with the majority conclusion that this Interim Agreement was there entitled to controlling weight, Member Leedom agrees that such agreement is not entitled to controlling weight herein.

CIO, shall notify the Regional Director for the Twenty-seventh Region, in writing, whether it will or will not refrain from forcing or requiring the Employer, by means proscribed by Section 8(b) (4) (D), to assign the work in dispute to carpenters rather than lathers.

Laboratory Equipment Corporation; Carl E. Schultz, Joseph A. Sauer, and George J. Krasl, a Co-partnership, d/b/a Leco Plating Company and District Lodge 39 of the International Association of Machinists, AFL-CIO. *Case No. 7-CA-4213.*
May 1, 1964

DECISION AND ORDER

On December 20, 1963, Trial Examiner Sydney S. Asher, Jr., issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief, and the Respondent filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Jenkins].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the General Counsel's exceptions and brief, the Respondent's cross-exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

TRIAL EXAMINER'S DECISION

On May 1, 1963, District Lodge 39 of the International Association of Machinists, AFL-CIO, herein called the Union, filed charges against Laboratory Equipment Corporation, St. Joseph, Michigan, herein called Respondent Corporation, and Carl E. Schultz, Joseph A. Sauer, and George J. Krasl, a co-partnership, d/b/a Leco Plating Company, St. Joseph, Michigan, herein called Respondent Partnership. The General Counsel¹ issued a complaint on June 12, 1963, alleging that since on or about March 22, 1963, the Respondents, by certain specified conduct, have interfered with, restrained, and coerced their employees, and that Respondents discharged Walter Lausman, an employee, on April 4, 1963, and since then have failed and refused to reinstate him, because he joined or assisted the Union or engaged in other concerted

¹The term "General Counsel" refers to the General Counsel of the National Labor Relations Board and his representatives at the hearing.