

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**LOCAL UNION OF THE INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL,
ORNAMENTAL, AND REINFORCING IRONWOKERS,
Charged Party – Labor Organization**

Case No. 08-CD-159904

and

**R.G. SMITH COMPANY, INC., Charging Party –
Employer,**

and

**THE INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL
OF CARPENTERS, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA, Party in
Interest,**

and

**SHEET METAL WORKERS' LOCAL UNION NO. 33,
AKRON DISTRICT a/w INTERNATIONAL
ASSOCIATION OF SHEET METAL, AIR, RAIL, AND
TRANSPORTATION UNION. Party in Interest.**

**SHEET METAL WORKERS' LOCAL UNION NO. 33,
AKRON DISTRICT a/w INTERNATIONAL
ASSOCIATION OF SHEET METAL, AIR, RAIL, AND
TRANSPORTATION UNION, Charged Party- Labor
Organization**

Case No. 08-CD-160179

and

**R.G. SMITH COMPANY, INC., Charging Party –
Employer,**

and

**THE INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL
OF CARPENTERS, UNITED BROTHERHOOD OF
CARPENTERS, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA, Party in
Interest,**

This matter comes before the National Labor Relations Board (“Board”) as a consolidated case, alleging violations by three Unions of Section 8(b)(4)(D) of the National Labor Relations Act (“Act”). Region 8 of the Board found merit to the charges and held a Section 10(K) hearing on December 1, 2015, to determine the work jurisdiction dispute that underlies the three charges. This Brief is filed on behalf of Sheet Metal, Air, Rail and Transportation Local Union No. 33, Akron District, a Charged Party/Party-in-Interest, to persuade the Board to find the work jurisdiction should continue to be split among composite crews of Sheet Metal Workers and Iron Workers only, as the Employer herein prefers.¹

I. Factual Background.

The Employer/Charging Party, R.G. Smith Company, Inc. (“Employer” or “Charging Party”), is a self-performing industrial contractor that performs work mostly in northern Ohio. (Transcript 24, 15-22). The Employer services heavy industry, including manufacturing of any kind (Transcript 64, 07-10) and is signatory to several trades’ collective bargaining agreements, including the three trades involved in this proceeding: Iron Workers Local 550 (“Iron Workers”); Sheet Metal, Air, Rail and Transportation Local 33, Akron District (“Local 33” or “SMART”); and Carpenters/Millwrights Union Local 735 (“Millwrights”). [See Charging Party Ex. 1, 2 and 3].

The Employer is hired by customers, including steel businesses and food manufacturing facilities, to perform, among other things, mill maintenance and equipment setting work. (Transcript 31, 4-19). In assigning such work, the Employer determines the signatory trade that can

¹ Because the Employer, Iron Workers and Local 33 all appeared at the Hearing in this matter and presented consistent testimony and other evidence to support the existing and preferred assignment of the work in question to composite crews of Iron Workers and SMART, this Brief adopts as if restated herein the position of the Employer and Iron Workers as set forth in their Briefs and focuses herein on the evidence presented by SMART Local 33. The Millwrights did not appear at the Hearing and thus did not submit any evidence into the record.

perform the job “in the most efficient and qualified manner.” (Transcript 32, 02-05.) Traditionally, meaning for at least the past 16 years, the Employer has assigned mill maintenance and equipment setting to crews comprised of Iron Workers and Sheet Metal Workers. (Transcript 33, 08-19.)

The instant dispute began at an Ohio steel plant serviced by the Employer, the Arcelor Mittal facility in Shelby, Ohio, in May 2015. At that time, Carpenters/Millwrights Union Local 735 filed a grievance over the Employer’s assignment of mill maintenance and equipment setting work to Local 33 and the Iron Workers [See Charging Party Ex. 10 and 11], but not to the Millwrights. [Charging Party Ex. 4]. (Transcript 41, 02-09). There were only 7 to 10 days of work left on the job, and the Employer did not disrupt the Composite Crew to which it had assigned the work. (Transcript 68-69). Eventually, the Millwrights dismissed the grievance, in approximately October 2015, but they specifically continued their claim to the mill maintenance and equipment setting work. (Id. at 18-21; also 46, 05-08).

In the meantime, in August 2015, another customer, AK Steel in Mansfield, had an extended shutdown for 10 days, during which it contracted the Employer to do a variety of jobs in the plant, as many as 30 separate jobs. (Transcript 75-76; 95, 21-24). Among the jobs were mill maintenance and installation of new equipment. (Transcript 76, 02-16). The work had many facets but included a Water Cooled Elbow Replacement (“Elbow”) and the South Descale Pump Replacement (“Pump”). (Transcript 89, 18-22). The Employer historically, consistently assigned such work at AK Steel to a composite crew of employees represented by SMART Local 33 and the Iron Workers (hereinafter “Composite Crews”). The Employer determined to again use Composite Crews, and it sent letters of assignment regarding same. [SMART Ex. O1 and P1]. (Transcript 78-79).

After the August 2015 assignment of work at AK Steel to the Composite Crews, the Millwrights verbally and by email threatened another grievance against the Employer. (Transcript 47, 08-17; also 77, 12-17; also Transcript 90-91) and [Charging Party Ex. 12].

On or about September 10, 2015, the Employer notified Local 33 that the Carpenters/Millwrights Union Local 735 “recently filed a grievance against RG Smith Company and has threatened to file a second grievance” over the assignment of the Elbow and Pump work. [Charging Party Ex. 6]. The Employer also notified the Iron Workers of the same threat. Both Local 33 and the Iron Workers responded in writing to the Employer, asserting their claim to the work and threatening action to enforce their claims. [Charging Party Ex. 7 and 8]. The instant charges resulted, with the Elbow work being Case No. 08-CD-159904 and the Pump work being Case No. 08-CD-160179.

As a preliminary matter, Local 33 notes that it did not make any threat of economic action relative to the assignment of the Elbow and Pump work at AK Steel in Mansfield. As demonstrated in its September 11, 2015, response letter to the Employer, Local 33 threatened only its remedial rights under the collective bargaining agreement. [Charging Party Ex. 7, “We believe that the work was properly assigned. If any work is assigned or redirected to local 735 Carpenter/Millwrights from Sheet Metal Workers Local 33 that results in lost hours, we will engage in any activity that we deem necessary to protect our work. This will include grievances and withholding the referral of Sheet Metal Workers.”] Therefore, Local 33 has not done anything that constitutes a violation of Section 8(b)(4)(D) of the Act. *Longshoremen (ILWU) Local 7 (Georgia-Pacific Corp., Bellingham Division)*, 291 NLRB 89, 92-93(1988), *aff’d*, 892 F.2d 130 (D.C. Cir. 1989).

Further, Local 33 argues the 10(K) dispute, for reasons set forth fully below, should be resolved by the Board ordering the Employer to continue the assignment of the Elbow and Pump work at the AK Steel, Mansfield, facility to the Composite Crews.

II. Legal Analysis.

The factors considered relevant to the assignment of work are set forth in *NLRB v. Radio & Television Broadcast Engineers Union, Local 1212, Int'l Brtrhood of Electrical Workers (Columbia Broadcasting System)*, 364 U.S. 573 (1961); *Machinists Lodge 1743 (J.A. Jones Constr. Co.)*, 135 NLRB 1402 (1962), and their progeny. The Board's determination is "an act of judgment based upon common sense and experience, reached by balancing those factors involved" in each particular case. *Id.* Applying the factors to the instant case, the record of evidence is uncontroverted and establishes that the assignment of work to the Composite Crews is appropriate, as follows.

1. Collective Bargaining Agreements

The Employer here is signatory to collective bargaining agreements with the Iron Workers, Local 33 and the Millwrights. [Charging Party Ex. 1, 2 and 3, respectively]. The Elbow and Pump work is covered within the Scope of Work, Article 1 of the Local 33 collective bargaining agreement (Transcript 148-149). It also falls within the Scope of Work set for the in the Iron Workers' agreement at Section 4 (Transcript 126-128).

2. Company Practice

The Employer presented evidence that it has, for at least the past 16 years, assigned the disputed work to Composite Crews and further, that such assignment is the Employer's preference. See Transcript 65, 18-20; 66, 15-16; 86, 09-14. In contrast, the Employer's Division Manager in Mansfield, Rick Reece, testified that he has never made the assignment of the disputed work to the

Millwrights. (Transcript 65, 23). The Employer's customer in this case, AK Steel, has requested Composite Crews from the Employer but has never requested Millwrights to perform the work. (Transcript 93-94.) To the contrary, on one occasion, AK Steel asked the Employer to replace Millwrights on a job in its plant with employees represented by Local 33. *Id.* The Employer is satisfied with the Composite Crews' performance of this work. (Transcript 80, 17-21; 109, 09-13).

3. Economy and Efficiency

The Employer's Chief Operating Officer, Geoff Nicely, testified as to the economy and efficiency of the Composite Crews: he said they are familiar with the product and/or equipment, familiar with the plant, know the personnel, and "it's just second nature" to their trades, making them quicker at the work. (Transcript 33-34.) Mr. Nicely said the Composite Crews are "very efficient at what they do." (Transcript 56, 12-13.)

Mr. Reece agreed, noting the Composite Crews have the skills, knowledge and relationships with the customers that make them efficient. (Transcript 81, 16-20; 85, 195, 21-240-15). He further described the Composite Crews as more efficient than the Millwrights at the Elbow and Pump work. (Transcript 85, 16-21; also 109, 19-21 "The efficiency of the Iron Worker crews and the Sheet Metal Worker crews are vast beyond what the Millwright crews are. And efficiencies are what allow us to make money as a company").

By contrast, Mike Black, Industrial Division Manager for RG Smith (Transcript 102, 01-09), described his limited experience with the Millwrights as "painful," and as "costing us money as a company." (Transcript 112, 11-24). He estimated it cost the Employer 50% more to use Millwrights instead of Composite Crews, based on the only two times the Employer tried Millwrights for the disputed work. (Transcript 113, 02-10).

4. Skills of the Employees

The Employer specifically trains Sheet Metal Workers and Iron Workers to do mill maintenance and equipment setting, which are the broader categories of work under which the Elbow and Pump jobs are performed. (Transcript 80, 03-16). Mr. Nicely described the skills of the Composite Crews as superior for the following reasons: “For one, their knowledge. For two, their speed. For three, their customer interaction with my existing customers. They’re used to those customers. And just their all-around safety and performance is great.” (Transcript 54-55). By comparison, Mr. Nicely said, the Millwrights would rate as “poor” in the same skill sets. (Transcript 55, 10-12).

Local 33 presented substantial evidence of its training and experience with the Elbow and Pump work in question. SMART has a five-year apprenticeship program in which the last three years are devoted to “industrial and CAD detailing.” (Transcript 152, 17-22). SMART apprentices are specifically trained in the fabrication, installation and removal of air transfer and water-cooled elbows. (Transcript 154-155). [SMART Ex. A]. The training for Local 33 apprentices includes layout calculations [SMART Ex. E] and industrial welding applications [SMART Ex. F]. (Transcript 156-157.) They are trained in industrial safety issues [SMART Ex. G] and gas tungsten arc welding [SMART Ex. H], both of which are used in facilities like AK Steel. (Transcript 158-159). The SMART apprentices are trained on and with mechanical equipment that measures, fabricates and bends metal for various industrial applications. [SMART Ex. J, K, L, M]. (Transcript 162-167). The employees who are represented by Local 33 learn to fabricate, fit and install elbows of varying sizes, in industrial settings, usually attached to a furnace that is also being installed. [SMART Ex. Q, R]. (Transcript 168-169).

5. Certifications, Industry Practice, Arbitration Awards

Aside from the training certification attached to SMART's apprenticeship program, the record in this case is silent as to other certifications, the industry practice, and arbitration awards for the Elbow and Pump work.

III. Conclusion.

Based upon the entire record, and in full consideration of all relevant factors, it is clear the Employer is satisfied with the performance of the Composite Crews, and that continued efficiency and economy of its operations will result from maintaining the assignment of Elbow and Pump work at the AK Steel, Mansfield, facility to Composite Crews. Accordingly, the Board should order that the assignment continue to be made only to employees represented by SMART and the Iron Workers. *Iron Workers Local 70 (Pankow Construction Co.)*, 189 NLRB No. 45, 189 NLRB 318 (1971).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned counsel for SMART Local 33, being duly sworn, say that on December 22, 2015, I served the above-titled document(s) by **regular mail** upon the FOLLOWING PERSONS, ADDRESSED TO THEM AT THE FOLLOWING ADDRESSES:

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