

United Glass and Ceramic Workers of North America and its Local No. 21, AFL-CIO-CLC and American Saint Gobain Corporation and Window Glass Cutters League of America, Jeannette Local No. 10, AFL-CIO, Party to the Contract. Case 6-CD-244

September 23, 1968

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

This is a proceeding pursuant to Section 10(k) of the National Labor Relations Act, following a charge filed on April 12, 1968, by American Saint Gobain Corporation, herein called the Employer, alleging that United Glass and Ceramic Workers of North America and its Local No. 21, AFL-CIO-CLC, herein called the Glass Workers, had violated Section 8(b)(4)(D) of the Act. A duly scheduled hearing was held before Hearing Officer Timothy P. O'Reilly on May 15, 1968. All parties appearing were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings made at the hearing are free from prejudicial error and are hereby affirmed. Briefs were filed by the Employer, the Glass Workers, and by Window Glass Cutters League of America, Jeannette Local No. 10, AFL-CIO, herein called the League, all of whom appeared at the hearing as parties to the dispute.

Upon the entire record in the case, the National Labor Relations Board¹ makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated that American Saint Gobain Corporation is a Delaware corporation which owns and operates, *inter alia*, three window glass plants located at Jeannette and Arnold, Pennsylvania, and Okmulgee, Oklahoma. Its principal office is located in Kingsport, Tennessee. The Jeannette, Pennsylvania, plant involved herein during the past 12-month period purchased raw material valued in excess of \$100,000 directly from outside the Commonwealth of Pennsylvania, and the value of products manufactured, sold, and shipped by it outside the Commonwealth of Pennsylvania during the same period was in excess

of \$100,000. We find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The Glass Workers and the League are labor organizations within the meaning of the Act.

III. THE DISPUTE

A. *The Work at Issue:*

The work that gave rise to this proceeding consists of the two-stage inspection of washed glass in the Employer's "cold end" plant. This inspection consists of a shadowgraph inspection in booth 1, and a visual inspection under intensive lights in booth 2. The glass involved is that destined for use as mirrors and must be free of minute distortions, scratches, or other imperfections. To protect the glass from damage during production, a protective plastic coating called "hum" is sprayed on the glass in the "hot end" of the plant. The hum is later washed off just before the glass is passed through the above inspection procedure. Employees represented by the Glass Workers place the glass on the conveyor leading to the inspection booths, remove it after inspection, and dispose of it according to the inspectors' designation.

Prior to the installation of the above process, final inspection of mirror glass prior to shipment was performed visually before a bank of lights by two employees who were members of the League. These same two employees were assigned to the new process when it was installed.

B. *Contentions of the Parties*

The Employer contends that the Board should find a jurisdictional dispute and assign the work of performing the inspection in booths 1 and 2 to its employees who are represented by the League.

The Glass Workers claims that based on its certification and contracts with the Employer, employees represented by it are entitled to have the work assigned to them.

The League contends that based on its contract with the Employer as well as past practice and industry practice, the work in dispute should be assigned to employees represented by it.

¹ 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

C. *Applicability of the Statute*

Section 10(k) of the Act empowers the Board to determine the dispute out of which an 8(b)(4)(D) charge has arisen. However, before the Board proceeds with a determination of dispute, it must be satisfied that there is reasonable cause to believe that Section 8 8(b)(4)(D) of the Act has been violated. In order to conclude that reasonable cause exists, the Board must find evidence in the record showing that conduct proscribed by this section has occurred and that such conduct was engaged in for the purpose of forcing or requiring an employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class.

The record shows that on or about February 3, 1968, the Employer assigned the work of inspecting washed glass in the Employer's "cold end" plant to employees represented by the League. Thereafter, the Glass Workers claimed the work and filed a grievance which was denied by the Employer. On or about April 3, 1968, employees represented by the Glass Workers stopped work in protest over the continued assignment of the inspection work to employees represented by the League. Plant Manager Stayer testified that when the work stoppage started, the Glass Workers representatives (representing both the International and Local 21) told him that the work stoppage would continue until the inspection work in dispute was assigned to employees represented by the Glass Workers. After a short discussion between the manager and the Glass Workers representatives, it was agreed that the Glass Workers would call off the work stoppage conditioned on the Employer submitting the dispute to the National Labor Relations Board.

Upon the evidence before us, we are satisfied that there is reasonable cause to believe that the Glass Workers engaged in the work stoppage as described above with an object of forcing the assignment of the disputed work to its members rather than to employees represented by the League. Such circumstances are sufficient to invoke the Board's jurisdiction to hear and determine the dispute within the meaning of Sections 8(b)(4) and 10(k) of the Act.

D. *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 and the Board has held that its determination in jurisdictional dispute cases is an act of judgment based upon common sense and experience in balancing such factors.² The record shows that although both unions have contractual relations with the Employer, the Glass Workers was certified on March 31, 1949, in Case 6-RC-313 for all production and maintenance employees of the Employer's plants located at Arnold, Jeannette, and Belle Vernon, Pennsylvania, and Okmulgee, Oklahoma, excluding "all window glass cutters, window glass cutter apprentices, and window glass inspectors of the cutting room . . ." At the same time, the record shows that the League has been the collective-bargaining representative for the cutters and inspectors at the Jeannette and Arnold, Pennsylvania, plants for over 25 years. The League's current contract with the Employer provides that the Employer recognizes the League as the

exclusive representative for the purpose of collective bargaining of all hand cutters of window glass, inspectors of hand cut window glass, apprentices to the hand cutting of window glass (cutting machine operator, reject cutter-machine cut glass and the inspector-machine cut glass in accordance with the Miami agreement dated May 15, 1958, hereinunder set forth in this agreement), at the Company's now existing window glass plant or plants.

The Glass Workers current contract with the Employer provides for recognition in a unit composed of

. . . all production and maintenance employees employed by the Employer at its window glass plants located at Okmulgee, Oklahoma, and Jeannette, Pennsylvania, and Arnold, Pennsylvania; excluding all employees under the jurisdiction of the Window Glass Cutters League, AFL-CIO, salaried and clerical employees, etc.

From the above-described contract clauses, it would appear that the function of inspecting the glass in question falls within the scope of the League's recognition clause. However, the Glass Workers contends that its contracts with the Employer, dating back to at least 1939, have included within the job classifications the jobs of shadowgraph-check-conveyor and shadowgraph-assembler, and that the inspection in booth 1 is performed with the use of a shadowgraph. Although there is no testimony on the record as to the job function of

² *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Co.)*, 135 NLRB 1402, citing *NLRB v. Radio &*

Television Broadcast Engineers Union, Local 121, Electrical Workers [Columbia Broadcasting System], 364 U.S. 573.

shadowgraph-assembler, the record clearly shows that the job of shadowgraph-check-conveyor is a job that has not existed for the past several years, its functions having been to examine within prescribed tolerances certain automobile window glasses destined for delivery to the Ford Motor Company. The shadowgraph work was not a final inspection of the product as such. Rather, it appears to have been but another step in the production process involved in producing Ford's order.

Past and area practice, although not definite, tend to support the League's claim to the work in dispute. Thus, the evidence submitted by the League, including the Employer's correct contracts with both unions, supports the conclusion that the League has traditionally been the bargaining representative for those employees working as inspectors in the "cold end" of the typical window glass manufacturing plant. On the other hand, however, in those plants where the Glass Workers Union is the only union, its members perform all of the inspection work.

As to efficiency and economy of operation, the record is inconclusive to support an award to either group of employees. The record clearly shows that the material involved in the work in question is brought to the inspectors by employees represented by the Glass Workers and that other employees represented by the Glass Workers next handle the material after it is processed through the two booths. Relying on this factor, the Glass Workers contends that this inspection is an integral step in the production process, and that its members should do the inspection work. However, the record also shows that the cutters and inspectors represented by the League work at various locations throughout the "cold end" of the plant and that in almost every instance, employee members of the Glass Workers Union handle the glass just before and just after processing by the cutters.

As to the skills involved, the record is not entirely clear as to whether or not this particular work requires that degree of skill possessed by a journeyman glasscutter. From the testimony it appears that within certain limitations the inspection of window glass can be performed by a person with less than journeyman training. At the same time the work in dispute involves the inspection and classification of the Employer's highest grade of glass; i.e., mirror glass to be delivered to the trade for the production of mirrors.

We view the dispute to be decided here as a narrow one, limited to the work of inspecting glass with a shadowgraph machine in booth 1 and the

subsequent inspection in booth 2 in the "cold end" of the Employer's Jeannette, Pennsylvania, plant. Upon consideration of all pertinent factors in the entire record, we shall not disturb the Employer's assignment of the disputed work to members of the League. The glasscutters are sufficiently skilled to perform the work in question, assignment to them of the work appears to be supported by past and area practice, and the League currently operates under a contract which includes language supporting the League's claim that inspection of work properly belongs to the glasscutters. Accordingly, we shall determine the existing jurisdictional dispute by deciding that the inspectors, represented by the League, are entitled to the work of inspecting washed glass in booths 1 and 2 in the "cold end" of the Employer's plant. In making this determination, we are awarding the work in question to employees represented by the League, but not to the League or its members. Our present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following determination of the dispute.

1. Glasscutters employed by American Saint Gobain Corporation, who are represented by Window Glass Cutters League of America, Jeannette Local No. 10, AFL-CIO, are entitled to perform the work of inspecting washed glass sheets at booths 1 and 2 in the cold end of the Employer's window glass plant located in Jeannette, Pennsylvania.

2. United Glass and Ceramic Workers of North America and its Local No. 21, AFL-CIO-CLC, are 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 employees who are represented by the Glass Workers Union.

3. Within 10 days from the date of this Decision and Determination of Dispute the Glass Workers shall notify the Regional Director for Region 6, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to glass workers rather than to cutters employed by the Employer.