PACIFIC MARITIME ASSOCIATION

Arbitration Award 08/17/1939 Labor Spies

IN THE MATTER OF A CONTROVERSY BETWEEN

THE INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION DISTRICT #1, COMPLAINANTS

AND

WATERFRONT EMPLOYERS ASSOCIATION,
RESPONDENTS

Involving the question as to whether or not a union resolution charging the employers with the employment of labor spies, informers, or undercover agents within the union ranks presented an arbitrable issue.

ARBITRATOR'S AWARD

Mr. Clifford D. O'Brien

Mr. Harry R. Bridges

For Complainants

Mr. Gregory Harrison

For Respondents

WAYNE L. MORSE

Coast Arbitrator

Eugene, Oregon

August 17, 1939

ARBITRATION AWARD

I.

FACTS

The record of this case shows that at a meeting of the Labor Relations Committee, the representatives of the union introduced the following resolution:

"That the employment by the Waterfront Employers Association, either openly or secretly, of labor spies, informers or undercover agents within the union's ranks is a violation of the agreement; and that employment of such person sin connection with the operation and administration of the hiring hall, Labor Relations Committee, or application of the working agreement is a violation of the agreement."

It appears that the representatives of the employers refused to discuss the resolution with the union representatives because they believed it to be not only an improper resolution but one which did not raise an arbitrable issue under the agreement of October 1, 1938. The union then referred the matter to the coast arbitrator for decision. On June 22, 1939, an arbitration hearing on the matter was held in San Francisco.

In his opening statement counsel for the union made clear that the union was not prepared to prove by explicit evidence specific charges showing that the employers "presently have this, that, or the other person in their employ as a labor spy, informer, or undercover agent". Counsel stated:

"We will offer proof that the employers have exhibited knowledge of matters secret within the union, never publicized and only discusses on the floor of the union meetings in supposed secret meeting. That end result evidences to us that . . . some way, somehow, the employers have gotten information secret to the union and that, therefore, they are making it their business to see what goes on in our meetings and otherwise, which should be solely our business. That is the general nature of our case, Mr. Arbitrator."

In the discussion which followed between counsel for the union and counsel for the employers, as well as with arbitrator, it became perfectly clear that the union did not propose to prove its case y way of a bill of particulars showing that the employers had hired any particular individuals as labor spies, informers, or undercover agents. Rather, the discussion showed that the union would seek to prove

that certain alleged secret union information had been found from time to time to be within the possession and knowledge of the employers. It was the theory of the union that if it could show that the employers had possession of such secret information, it would have established a prima facie case in support of the contention that the employers were guilty of hiring labor spies, informers, and undercover agents.

After the two counsel for the union had presented their opening statements, in which they made a full explanation of the union's theory of the case, counsel for the employers moved that the case be dismissed on the ground that no arbitrable issue had been presented to the arbitrator. The arbitrator then rendered an oral decision dismissing the case. He stated that a written decision covering the issue would be submitted at a later date. That written decision is submitted herewith.

II.

Issue

Did the resolution presented by the union representatives at the meeting of Labor Relations Committee, said resolution proposing that the employment by the employers of labor spies, informers, or undercover agents within the union ranks would constitute a violation of the agreement, raise an arbitrable issue?

III.

Decision

As was stated by the arbitrator on June 22, 1939, when he sustained a motion to dismiss this case because it did not involve an arbitrable issue, this case presents a very important procedural question insofar as arbitration under the agreement of October 1, 1938, is concerned. Is it contemplated under the agreement that the parties thereto can present for arbitration general issues or questions, such as contained in the union's resolution in the instant case, unrelated to a specific dispute or unsupported by a bill of particulars?

The record of this case makes clear that counsel for the union would not have been able to present to the arbitrator, if the issue had been permitted to go to arbitration, any specific evidence showing that the employers had hired any specific individuals as labor spies, informers, or undercover agents. No bill of particulars charging the employers with specific acts was to be from the arbitrator on the general proposition that if the employers had employed, were employing, or should in the future employ labor spies, informers, or undercover agents they would thereby by guilty of violating the agreement of October 1, 1938.

It should be perfectly clear to all concerned, as was pointed out in the oral decision of June 22, 1939, that if the arbitration provisions of the agreement of October 1, 1938, should ever be interpreted as covering such general issues unrelated to specific disputes as the one raised in the union's resolution there would be no end to arbitration under the agreement. In the past both parties to the agreement have, on occasion, lamented the fact that there have been too many cases submitted for arbitration under the agreement. The arbitrator's language on that point in his oral decision of June 22, 1939, was as follows:

"Talk about excess arbitration! Talk about bankrupting each other by way of arbitration procedure! I just cannot imagine where the end of the list would be if I permitted either side to come in and say, "Now, Mr. Arbitrator, we have a general question we would like to submit for arbitration. Our general question this morning is that we feel that it would be a violation of the Agreement for the employers to have a representative walk into or visit the hiring hall. We are not saying that such a visitation has or has not been made, but we think it would be a violation of the Agreement if such did happen."

It should be clear to the parties that it would be most unwise to establish in this case as a precedent a procedural rule which would permit the parties to submit to arbitration general issues or hypothetical questions unrelated to a specific violation of the agreement of October 1, 1938. If such a procedural rule were adopted there is nothing but the limitation of the imaginations of the two parties to the agreement that would circumscribe the type of general question that might be submitted to the arbitrator. Furthermore, the arbitration provisions of the agreement of October 1, 1938, are not subject to an interpretation which would permit of such a rule of procedure as the one contended for by the union in this case. Section 9 of the agreement of October 1, 1938, contains the arbitration provisions governing the parties to the agreement and it reads as follows:

"Section 9. The parties shall immediately establish for each port affected by this Agreement a Labor Relations Committee to be composed of three representative designated by the employers associations of that port and three representatives designated by the International Longshoremen's & Warehousemen's Union.

"By mutual consent the Labor Relations Committee in each port may change the number of representatives from the Union and the Association.

"The Secretary of Labor or nay person authorized by the Secretary, at the request of either party shall forthwith appoint a standing Coast arbitrator and also a standing local arbitrator in each of the four regional districts who shall serve for the period of this agreement.

"In the event that any Labor Relations Committee or the parties hereto fail to agree on any question involving a basic interpretation of this agreement or any other question of mutual concern not covered by this contract relating to the industry on a Coastwide basis, such question, at the request of either party, shall be referred for decision to such Coast arbitrator.

"In the event that any Labor Relations Committee or the parties hereto fail to agree upon any question of local application within twenty-four (24) hours after it has been presented, such matter, at the request of either party, thereupon shall be referred for decision to the local arbitrator for the district in which the matter in dispute arises.

"The Coast arbitrator shall have the power to determine whether any question in dispute involves a basic interpretation of the agreement and if the dispute in question is one of mutual concern relating to the industry and not covered by the agreement, whether it is of Coastwide

or local application.

"If any Standing Arbitrator, Coast or port, shall be unable, refuse or fail to act, or resign, then the Secretary of Labor shall promptly appoint his successor or substitute.

"The expenses of any arbitrator shall be borne equally by the Association and the Union.

"Nothing in this section shall be construed to prevent the Labor Relations Committee from agreeing upon other means of deciding matters upon which there has been disagreement."

When section 9 is read in connection with the entire agreement it becomes clear that the powers and duties of an arbitrator fall into two main categories.

First, the arbitrator shall arbitrate in accordance with contract law specific disputes involving a basic interpretation of the language of the agreement. Included within this power to interpret the meaning of the contract is the duty of the coast arbitrator to consider any questions of mutual concern not covered by the contract relating to the industry on a coastwide basis. However, this provision of the agreement does not mean that the parties can submit to the arbitrator any question of a general or hypothetical nature. Rather, the only reasonable interpretations that can be given to it is that any question of mutual concern not covered by the contact which arises out of a specific dispute can be submitted to the arbitrator for his consideration.

Second, the arbitrator shall have jurisdiction over cases in which the parties file allegations of specific violations of the agreement of October 1, 1938, -- not hypothetical violations, not violations put in hypothetical form in regard to which the parties say in an opening statement to the arbitrator that they have no specific evidence, no specific charges, no bill of particulars in support thereof.

In the instant case no proof was to be offered by the union which proof would seek to establish any specific violation of the agreement October 1, 1938, by the employers insofar as the hiring of labor spies was concerned. The arbitrator wishes to hve it clearly understood that whenever the union is prepared to come before him and say in effect, "We charge the employers with hiring labor spies, informers, and undercover agents within the union ranks and we are ready and prepared to prove our charges specifically" then this arbitrator will necessarily have to rule that an arbitrable issue is before him. It will then be necessary to look into the agreement of October 1, 1938, and determine whether or not the specific acts protested by the union constitute a violations of that argument.

However, no such offer of proof was made in this case by the union and, therefore, it is the ruling of the arbitrator that the resolution presented in the Labor Relations Committee by the union and subsequently submitted to the arbitrator for consideration failed to present an arbitrable issue within the jurisdiction and powers of the arbitrator.

Respectfully submitted,

(Signed) Wayne L. Morse

WAYNE L. MORSE

Coast Arbitrator