

**Laborers' District Council of Washington, D.C. and Vicinity, affiliated with Laborers' International Union of North America, AFL-CIO and Western Caissons, Inc.**

**International Union of Operating Engineers, AFL-CIO and Western Caissons, Inc. and Carpenters' District Council of Washington, D.C. and Vicinity and its affiliated Local Union No. 2311, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO.<sup>1</sup> Cases 5-CD-233 and 5-CD-234**

March 5, 1979

## DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

Case 5-CD-233 is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed on June 16, 1977, and amended on June 29, 1977, by Western Caissons, Inc. (Western Caissons or Employer), alleging that Laborers' District Council of Washington, D.C. and Vicinity, affiliated with Laborers' International Union of North America, AFL-CIO (Laborers), violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activities with an object of forcing Western Caissons to assign certain work to employees represented by Laborers rather than to employees represented by Carpenters' District Council of Washington, D.C. and Vicinity and its affiliated Local Union No. 2311, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Carpenters).

Case 5-CD-234 is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed on June 16, 1977, and amended on June 29, 1977, by Western Caissons alleging that International Union of Operating Engineers, AFL-CIO (Operating Engineers or IUOE), violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing Western Caissons to assign certain work to employees represented by Operating Engineers rather than to employees represented by Carpenters.

Pursuant to an order consolidating cases and to notice, a hearing was held before Hearing Officer Nicholas E. Karatinos on September 7, 1977, and before Hearing Officer Harvey A. Holtzman on September 8 and 9, and November 28, 1977, at Washing-

ton, D.C. 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. Thereafter, briefs were filed by all parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the Hearing Officers made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed. The Board has considered the briefs and entire record in this case and hereby makes the following findings:

### I. BUSINESS OF THE EMPLOYER

Western Caissons, a Canadian corporation which operates throughout the United States, Canada, and the Middle East, is a foundation construction company engaged in the construction of all types of pilings, caissons, and shoring installations. The parties stipulated, and we find, that the Employer is engaged in commerce or an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the policies of the Act to assert jurisdiction.

### II. THE LABOR ORGANIZATIONS

The parties stipulated, and we find, that Laborers, Operating Engineers, and Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

### III. THE DISPUTE

#### A. *The Work in Dispute*

The work in dispute which the Employer has assigned to composite crews of laborers and operating engineers involves a number of tasks in the construction of drilled shaft foundations. The work in dispute between Laborers and Carpenters consists of loading, unloading, stacking, setting, and removing temporary and permanent steel castings used in the construction of drilled or augured holes for foundation piers. Included in the setting and removing are the tasks of hooking, unhooking, signaling, and aligning. The work in dispute between Operating Engineers and Carpenters consists of the welding and burning of temporary and permanent steel casings used in the construction of drilled or augured holes for foundation piers.

<sup>1</sup> Name appears as corrected at the hearing.

### B. *Background and Facts of the Dispute*

The Employer has operated in the Washington, D. C., area since 1969; however, its initial project involving drilled shaft foundation work in the Washington region did not occur until 1976—at the National Naval Medical Center, Bethesda, Maryland. Upon completion of that project, the Employer contracted to construct drilled shaft foundations at two other locations: Crystal Square No. 3, Alexandria, Virginia, and the National Institutes of Health, Bethesda, Maryland.

Western Caissons has agreements with all three labor organizations. In August 1975 it signed an agreement with Operating Engineers Local No. 77 of Washington, D.C. (Operating Engineers Local 77). This agreement contains a provision which provides that any jurisdictional dispute shall be submitted to the Impartial Jurisdictional Disputes Board (IJDB) for settlement in accordance with the plan adopted by the Building and Construction Trades Department, AFL-CIO.

Laborers and Western Caissons entered into an agreement which provides for the resolution of jurisdictional disputes through arbitration. Similarly, the Employer's agreement with Carpenters, signed on July 2, 1976, provides for resolution of jurisdictional disputes through an arbitration procedure.

In addition, on August 4, 1976, Western Caissons entered into a National Agreement with both the Laborers' International Union of North America, AFL-CIO (Laborers' International Union), and the IUOE which includes a provision assigning the disputed work exclusively to laborers and operating engineers and establishes a procedure for resolving jurisdictional disputes.<sup>2</sup> That agreement further provides that it supersedes any previous agreements entered into between the Employer and a local union or district council of the unions signatory to the National Agreement insofar as these previous agreements established any other method for resolving jurisdictional disputes.

The current dispute arose out of the Employer's work assignments at National Institutes of Health and Crystal Square No. 3. The same issue had been raised in July 1976 at the National Naval Medical

Center project; there the Employer and Carpenters went to arbitration over the Employer's assignment of the disputed work to a composite crew of laborers and operating engineers. That arbitration resulted in a finding on November 13, 1976, that the Employer's work assignment violated its agreement with Carpenters. Laborers did not participate in the arbitration; however, an official of Operating Engineers did testify at the proceeding.

In a letter dated April 11, 1977, Laborers threatened to strike if the Employer changed its assignment of the disputed work; the threat was repeated by a telephone call on June 1, 1977. By letter dated June 10, 1977, Operating Engineers made a similar threat. On June 16, 1977, Western Caissons filed charges (later amended on June 29, 1977) alleging violations of Section 8(b)(4)(D) by Laborers and Operating Engineers. On June 17, 1977, the Employer assigned the disputed work at both projects to a composite crew of laborers and operating engineers.

### C. *Contentions of the Parties*

Carpenters contends that there exists an agreed-upon method for the voluntary adjustment of the dispute based upon the Employer's contract with Operating Engineers Local 77 and the affiliation of each of the labor organizations with the Building and Construction Trades Department, AFL-CIO. Alternatively, Carpenters contends that the Board should assign the disputed work to employees represented by Carpenters on the basis of the arbitration result and area practice.

The Employer, Laborers and Operating Engineers contend that there is no agreed-upon method for voluntary adjustment of the dispute and that the disputed work should be awarded to employees represented by Laborers and Operating Engineers on the basis of economy, efficiency of operation, safety, employer practice and preference, and industry practice.

### D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and (2) the parties do not have an agreed-upon method for voluntary settlement of the dispute.

We are satisfied that there is reasonable cause to believe that an 8(b)(4)(D) violation has occurred in this case. Laborers threatened to strike on two occasions in the event the Employer altered its customary practice in assigning the disputed work and Operating Engineers delivered a similar warning on June 10,

<sup>2</sup> Sec. 13.4 of the National Agreement provides:

13.4 Any work jurisdiction dispute shall be settled in the following manner:

Step 1 The first attempt to settle any such dispute shall be made at the jobsite between the Representatives of the Local Union or District Council involved and the employer's representatives.

Step 2 If said dispute is not settled at the jobsite within three (3) days, it shall be referred to the General Presidents of the Unions or their designated representatives for settlement. If the dispute is not promptly settled on this level, the work shall continue as originally assigned by the employer.

1977. These threats were delivered in anticipation of an assignment of the disputed work at two locations and in the context of a heated and ongoing dispute over the Employer's practice of assigning the disputed work. Furthermore, the favorable arbitration award obtained by Carpenters provided an obvious and reasonable basis for Laborers and Operating Engineers to fear that the Employer might be influenced to change its work assignment practices. There is no evidence in the record that indicates that either of the Charged Unions received any assurances from the Employer that the arbitration award of the disputed work to employees represented by Carpenters would not affect Western Caissons' future work assignment policy. Accordingly, since the threats were delivered with the object of forcing or requiring the Employer to continue its practice of assigning the disputed work to a composite crew of employees represented by Laborers or Operating Engineers, we find there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated and, assuming that an agreed-upon method for settling the instant dispute does not exist, this case is properly before the Board for a determination under Section 10(k) of the Act.

From the record as a whole, it is clear that there is no agreed-upon method for the resolution of this dispute. We do not agree with Carpenters' contention that the IJDB constitutes an agreed-upon settlement method because to constitute an agreed-upon method for settlement a procedure must bind all the parties to the dispute, including the employer.<sup>3</sup> The Employer is not bound here. Although each of the unions is bound to the IJDB by virtue of their membership in the Building and Construction Trades Department, AFL-CIO, Western Caissons has not obligated itself to resolve work assignment disputes through that procedure. While the Employer's last collective-bargaining agreement with Operating Engineers Local 77 obligates it to refer disputes to the IJDB that obligation was specifically rescinded by the plain language of article 16 of the National Agreement which was later entered into by the Employer and IUOE. Since the parties have not agreed upon a voluntary method of settling this jurisdictional dispute, this dispute is properly before the Board for determination under Section 10(k) of the Act.

Our dissenting colleague characterizes the threats to strike, made by Laborers and Operating Engineers to obtain a favorable work assignment from the Employer, as "mere paper threats delivered only for the purpose of activating this 10(k) proceeding." The

predicate for this conclusion is based on the fact that, in the past, the Employer had always assigned such work to a composite crew composed of laborers and operating engineers and prior to the threats here in question had given no indication that it was contemplating changing its existing practice. The dissent further argues that the National Agreement between the Employer and International Unions of the Laborers and the Operating Engineers was entered into for the purpose of avoiding a resolution of such disputes by the IJDB and in particular to protect themselves from any claim the Carpenters might make for such work.

It seems to us that our colleague attempts to prove too much. If, in fact, the National Agreement was nothing more than a mere subterfuge to overcome the work jurisdiction of Carpenters, it would certainly show that Laborers and Operating Engineers had a reasonable fear that Carpenters might prevail again, as they had once in the past, in overturning the results of the Employer's work assignment. If that were the case, and we do not believe it is, the threats to strike by Laborers and Operating Engineers can hardly be characterized as mere paper threats.

In our view, the threats to strike were both "valid and legitimate"; i.e., real and intended. They were in response to a prior arbitration award which found in favor of Carpenters and left unresolved for future purposes the question as to whether the Employer under the then existing collective-bargaining agreements could continue its past practice of assigning the type of work here involved to a composite crew composed of laborers and operating engineers. In such circumstances, it certainly was not unreasonable for Laborers and Operating Engineers to fear that the Employer might change its assignment practice in order to avoid the risk of another unfavorable arbitration award.

With respect to the motive behind the decision to enter into the National Agreement, there may be a suspicion, but certainly not any proof, that it was prompted by a desire to defeat claims by Carpenters to this work. In fact, the signing of a National Agreement simply for the purpose of avoiding the jurisdiction claims of a local union would seem to be rather an extreme measure to take in remedying the problem. Furthermore, there are many legitimate reasons why a company which performs work on a nationwide basis would be desirous of reaching a national agreement with unions with which it deals on a regular basis. When, as here, the parties voluntarily decide to broaden the scope of the collective-bargaining arrangement, it is not proper for us to condemn or ignore such an agreement merely because it supersedes certain provisions previously agreed to by

<sup>3</sup> *N.L.R.B. v. Plasterers Local Union No. 79, Operative Plasterers' & Cement Masons International Assn., AFL-CIO, et al [Texas State Tile & Terrazzo Co.]*, 404 U.S. 116 (1971).

the parties. To say otherwise is to hold that once a collective-bargaining relationship has been entered into, the terms are cast in concrete and even the mutual desire of the contracting parties cannot change them. Here the National Agreement between the Employer and the International Union of Laborers and Operating Engineers establishes its own procedure for the resolution of jurisdictional disputes and specifically provides that these procedures supersede any previously agreed-upon methods of resolving jurisdictional disputes between the Employer and the two International Unions' affiliates. In sum, the parties by virtue of the National Agreement have elected to use the procedures under Section 10(k) of our Act to resolve such disputes, rather than submit them to the IJDB for a determination. Such is their right under the law. For if parties having once agreed to a private procedure for resolving jurisdictional disputes have changed their minds and eliminated that procedure, we merely engage in a sham if we deny them access to our process under Section 10(k) on the ground that they have an agreed-upon method of resolving their dispute.

#### *E. Merits of the Dispute*

Section 10(k) of the Act requires that the Board make an affirmative award of the disputed work after giving due consideration to various factors. The following factors are relevant in making a determination of the dispute before us.

##### 1. Collective-bargaining agreements

As discussed above, Carpenters, Laborers, and Operating Engineers all have collective-bargaining agreements with Western Caissons. Each of the contracts contain provisions assigning the disputed work claimed by the respective labor organizations to employees they represent. We conclude that the provisions of the various collective-bargaining agreements are of little value in determining the merits of the dispute.

##### 2. Employer past practice

The Employer has performed many thousands of drilled shaft foundation construction jobs throughout the country. Its uniform practice has been to assign the disputed work to a composite crew consisting of employees represented by Laborers and Operating Engineers. Employer practice favors an award to employees represented by Laborers and Operating Engineers.

##### 3. Economy, efficiency of operation, and safety

The record indicates that the drilled shaft foundation construction requires both laborers and operating engineers to perform tasks other than those in dispute in this proceeding. However, this is not the case with respect to employees represented by Carpenters. Thus, according to the testimony of both Western Caissons' vice president, Peter Kozicki, and vice president of the Association of Drilled Shaft Contractors, Gormon Dale Holt, assigning the disputed work to carpenters usually requires adding a member to the crew rather than merely replacing another worker, resulting in an increase in an employer's labor costs. Moreover drilled shaft foundation work involves a certain element of danger, resulting primarily from the fact that the work involves the swinging of heavy caissons around deep shafts, and as more workers are involved, the chances are increased that a dangerous or even possibly fatal injury may result. The addition of a carpenter would also tend to decrease efficiency of operation by requiring an increased coordination of effort among the various workers involved and although this loss of efficiency might not be substantial, nonetheless, we are unable to say that it would be insignificant. Thus, the factors of economy, efficiency of operation, and safety favor an assignment of the disputed work to employees represented by Laborers and Operating Engineers.

##### 4. Employer preference

Western Caissons assigned the disputed work to composite crews consisting of employees represented by Laborers and Operating Engineers and it is satisfied with the results of its assignment and maintains a preference for an assignment of the work to employees represented by Laborers and Operating Engineers. Employer preference favors an assignment of the disputed work to employees represented by Laborers and Operating Engineers.

#### Conclusion

Upon the record as a whole, and after full consideration of all the relevant factors involved, we conclude that employees represented by Laborers and Operating Engineers are entitled to perform the disputed work. In making this determination, we are assigning the disputed work to the employees of Western Caissons who are represented by Laborers and Operating Engineers, but not to those Unions or their members.

## 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 makes the following Determination of Dispute:

Employees of Western Caissons, Inc., represented by the Laborers' District Council of Washington, D. C. and Vicinity, affiliated with Laborers' International Union of North America, AFL-CIO, are entitled to perform the work of loading, unloading, stacking, setting, and removing temporary and permanent steel casings used in the construction of drilled or augured holes for foundation piers. Employees of Western Caissons, Inc., represented by the International Union of Operating Engineers, AFL-CIO, are entitled to perform the work of welding and burning of temporary and permanent steel casings used in the construction of drilled or augured holes for foundation piers.

CHAIRMAN FANNING, dissenting:

I would quash the notice of hearing in this case. Contrary to the majority, I would find that there was no valid and legitimate threat of strike by either Laborers or Operating Engineers and that Western Caissons has not been coerced in its assignment of the disputed work. In my judgment, the facts establish that the alleged threats were delivered as part of a coordinated effort to obtain the work assignment preferred by the Employer and charged Unions by circumventing the Impartial Jurisdictional Disputes Board (IJDB) and placing the dispute before the Board for resolution. In short, I believe that the threats were mere paper threats delivered only for the purpose of activating this 10(k) proceeding.

This dispute developed out of the Employer's initial project involving drilled shaft foundation construction in the Washington, D.C., area—at the National Naval Medical Center. Prior to 1976 in the Washington area a fairly uniform practice had developed of including employees represented by Carpenters in composite crews used in drilled shaft foundation construction. However, it was Western Caissons' uniform practice to assign the disputed work to composite crews of laborers and operating engineers.

In July 1976, when work was initiated at the National Naval Medical Center, Western Caissons had entered into agreements covering the disputed work with Laborers, Operating Engineers Local 77, and Carpenters. The agreement with Laborers provided for settlement of jurisdictional disputes through arbitration, as did the contract with the Carpenters. However, the contract with Operating Engineers Local 77 provided that jurisdictional disputes were to be

settled through referral to the IJDB.

In accordance with its customary practice, Western Caissons assigned the work at the National Naval Medical Center to a composite crew of laborers and operating engineers. Carpenters thereupon initiated arbitration under its contract which ultimately resulted, in November 1976, in an award finding Western Caissons' assignment of the disputed work at the National Naval Medical Center to be in violation of its contract with Carpenters.

In August 1976, shortly after the jurisdictional dispute arose at the National Naval Medical Center and while the aforementioned contracts were still in effect, Western Caissons entered into a National Agreement with the Laborers' International Union and the IUOE. This National Agreement covered drilled shaft foundation construction, included a provision assigning the work exclusively to laborers and operating engineers, and established a new method for settling jurisdictional disputes arising over the work it covered.<sup>4</sup> In article 16, the National Agreement provides that if an agreement between an employer signatory to the National Agreement and a local union or district council contains a provision which conflicts with the terms of the National Agreement, then the terms of the National Agreement shall prevail. In the next sentence the National Agreement states that "(a)ny procedure established by a local agreement for the resolution of jurisdictional disputes shall be deemed to conflict with this agreement."

Sometime during the first half of 1977, Western Caissons contracted to provide the drilled shaft foundation construction at National Institutes of Health and Crystal Square No. 3. Well before Western Caissons made any assignment of the work at those sites, in the case of Laborers it being over 2 months prior, Laborers and Operating Engineers threatened to strike in the event Western Caissons deviated from its normal practice and included carpenters on the composite crews. Yet at no time had Western Caissons given any indication that it intended to modify its longstanding and preferred policy of assigning the disputed work exclusively to a composite crew of laborers and operating engineers. And indeed, when on June 17, 1977, Western Caissons assigned the work at the two locations it maintained its customary practice.

Careful consideration of the foregoing leads inexorably to the conclusion that there was no real threat of strike by either of the charged Unions. At the time the disputed work initially became the subject of contention the Employer, by the terms of its

<sup>4</sup> See fn. 2, *supra*

agreement with Operating Engineers Local 77, had agreed to resolve jurisdictional disputes through the IJDB. Moreover, and significantly, each of the labor organizations here is, and remains, a member of the Building and Construction Trades Department, AFL-CIO, and therefore bound to the IJDB. The Board has consistently held since the establishment of the new IJDB that in such situations there exists an agreed-upon method for voluntary settlement.<sup>5</sup>

The Employer and the charged Unions, however, raise the National Agreement to refute the contention that there exists an agreed-upon settlement procedure because under that agreement the Employer's contract with Operating Engineers Local 77 is no longer operative with respect to the IJDB.

In my view it is clear that the Employer and the charged Unions have manipulated the facts to avoid submission of the dispute to the IJDB. Thus, the very timing of the Employer and charged Unions entering into the National Agreement raises the suspicion that it was entered into in direct response to Carpenters' claim. The Agreement was signed in early August 1976, only shortly after Carpenters challenged Western Caissons' work assignment at the National Naval Medical Center.

Also significant, in the context of this dispute, are the provisions of the National Agreement. Prior to signing the National Agreement Western Caissons had contracts with Laborers and Operating Engineers Local 77 covering virtually every facet of drilled shaft foundation work. The National Agreement adds little, if anything, to these prior agreements other than to attempt to officially assign the disputed work to a composite crew of laborers and operating engineers and to establish a new procedure for settling jurisdictional disputes. In establishing this new settlement procedure, however, it attempts to preclude any alternative method for settling work assignment controversies.

It seems apparent that the purpose of entering into the National Agreement was to alter the arrangements for settling jurisdictional disputes, avoid the IJDB, and obtain a substantial advantage in a dispute with Carpenters. Under the National Agreement, Western Caissons and the charged Unions can be almost certain that their preferred work assignment will not be disturbed. Its jurisdictional dispute settlement procedure provides that dispute will be

<sup>5</sup> *Painters Local 203, International Brotherhood of Painters and Allied Trades (E. O. Brunner Plastering Company)*, 234 NLRB 235 (1978); *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 447, AFL-CIO (Capitol Air Conditioning, Inc.)*, 224 NLRB 985 (1976); and *Pipefitters Local No. 195, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada (Cleveland Wrecking Company)*, 218 NLRB 172 (1975).

negotiated between the contending unions, giving each the ability to veto any arrangement not in conformity with its preference. If the negotiation procedure fails to resolve the dispute the National Agreement provides that the employer's work assignment prevails. Given Western Caissons' steadfast policy of assigning the disputed work to laborers and operating engineers, the National Agreement assures that any resolution of a jurisdictional dispute under its provisions would result in the work being done by employees represented by the charged Unions. The only alternative for Carpenters would be a 10(k) action which, given the Employer's preference, would afford them little chance of success.

Subsequent events leading to this 10(k) action being brought before the Board further substantiate my conclusions. Western Caissons was engaged to provide the work at the National Institutes of Health and Crystal Square No. 3 sometime during the first half of 1977. Well before it assigned the work at those locations Laborers and Operating Engineers delivered a threat to strike if Western Caissons deviated from its customary work assignment. Yet at no time had the Employer indicated that it intended to alter its practice, and it in fact did not do so. Why then the threats?<sup>6</sup>

In my judgment, the "threats" were made to obtain the Board's imprimatur for the assignment preferred by the Employer and charged Unions. Carpenters elected to pursue its claim to the disputed work through the arbitration procedure contained in its agreement with Western Caissons and exhibited no intention of striking, threatening to strike, or otherwise engaging in conduct designed to coerce the Employer into assigning the disputed work to its members. Consequently, to obtain Board sanction for their assignment it became incumbent upon the charged Unions to threaten Western Caissons, though they had no basis to fear that an unfavorable work assignment might be forthcoming. Western

<sup>6</sup> My colleagues contend that the "threats" were both valid and legitimate; i.e., real and intended. They conclude that under the circumstances the threats were reasonable in light of the charged Unions' fear that Western Caissons might change its work assignment practice in order to avoid the risk of another unfavorable arbitration award. In my view, however, the reasonable response would have been for Laborers and Operating Engineers to have asked the Employer if it intended to modify its longstanding work assignment policy rather than deliver unnecessary threats. The fact that the threats were delivered without any such inquiry supports my viewpoint that they were made to trigger this proceeding, particularly since Western Caissons never indicated that it intended to alter its long-established work assignment practice, and since the charged Unions were aware that the Employer had strongly resisted Carpenters' previous claims to the disputed work in the Washington area. In this context, the Charged Unions had little basis to fear a modification of the work assignment policy and their delivery of threats, absent any attempt to discover the Employer's intent concerning future assignments, can hardly be termed to be a reasonable course of conduct.

Caissons naturally fulfilled its role by filing 8(b)(4)(D) charges.

Under these circumstances it would strain credibility beyond reasonable limits to ignore the underlying factual basis of this dispute and find that there was a real attempt to coerce the Employer to assign the work to employees represented by the charged Unions. I am unable to accept the proposition that the Board must accept any threat on face value as sufficient to establish reasonable cause. Following such an approach invites misuse and abuse of the Board's processes. As members of the Building and Construction Trades Department, AFL-CIO, the Laborers' International Union and the IUOE are bound to the IJDB and committed to utilize that settlement procedure in resolving work assignment disputes. And not only had Western Caissons, by its last contract with Operating Engineers Local 77, agreed to be bound to the IJDB, but it also certainly knew that the Unions were repudiating their obligations to the IJDB when they entered into the National Agreement. I see no reason to reward this calculated effort to breach the parties' binding commitments to the

IJDB.<sup>7</sup> To give effect to the National Agreement's jurisdictional dispute provisions has just such an effect. Furthermore, it encourages the abandonment of private settlement mechanisms whenever parties perceive it to be advantageous to their self-interest to do so. Thus, as this case demonstrates, to accept any threat on face value discourages parties from pursuing private settlement procedures and makes it virtually impossible for these disputes to be settled except by the Board.

In Section 10(k) Congress expressed its preference for settlement of jurisdictional disputes among the parties without Board intervention whenever possible.<sup>8</sup> Automatic acceptance of all alleged disputes thwarts this clear expression of Congressional policy. Finally, such a policy improperly extends the jurisdictional bounds of the statute. As stated by the Supreme Court, "The Act and its remedies for 'jurisdictional' controversies come into play only by a strike or threat of strike."<sup>9</sup> (Emphasis supplied.) A mere paper threat of strike manufactured by parties solely for the purpose of initiating a 10(k) proceeding is clearly not within the purview of activity which was designed to activate the Board's jurisdiction in these cases. Accordingly, for the foregoing reasons I would find that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated and would quash the notice of hearing.<sup>10</sup>

<sup>7</sup> The question, as I see it, is not whether the parties have the right as my colleagues find to use the procedures under Sec. 10(k) of the Act to resolve jurisdictional disputes, but whether the Board will allow the Employer and charged Unions to perpetuate a sham by manipulating a dispute for their own interests. The Board has long encouraged peaceful resolution of jurisdictional disputes through private settlement mechanisms. The fact that the Employer and charged Unions intended to shut out the Carpenters on a national basis does not detract from the fact that they were attempting to avoid the voluntary adjustment of this dispute pursuant to their contractual obligations.

<sup>8</sup> See 93 Daily Cong. Rec. 4115 (1974).

<sup>9</sup> *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 263 (1964).

<sup>10</sup> *Chicago Typographical Union No. 16, AFL-CIO (Neely Printing Company, Inc.)*, 155 NLRB 963 (1965).