

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

SEAFARERS INTERNATIONAL UNION, ATLANTIC,
GULF, LAKES & INLAND WATERS DISTRICT/
NMU, AFL-CIO

Charged Party

and

Case 25-CD-301

LUEDTKE ENGINEERING COMPANY

Charging Party

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150

Party in Interest

HEARING OFFICER'S REPORT
ON SECTION 10(K) HEARING

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1. BACKGROUND

- a. Date charge filed: 12/21/2009
- b. Date Notice of Hearing issued: 12/31/2009
- c. Dates hearing opened and closed: 01/26/2010
- d. Parties:
 - Charging Party: Luedtke Engineering Company
 - Employer: Same as Charging Party
 - Charged Union: SIU
 - Union Party in Interest: IUOE Local 150 [did not appear at hearing]
- e. Date briefs due: 02/02/2010
- f. Estimated transcript length: 130 pages

2. ISSUES

The issue is which union should be awarded the hydraulic picker work at the Burns Ditch jobsite in Portage, Indiana. It is anticipated that Local 150 will submit a brief and/or motion arguing that they have disclaimed the work (Bd ex. 3) and therefore no jurisdictional dispute remains. Luedtke is expected to argue that the award should not only cover the work at Burns Ditch (which has since been completed), but also upcoming projects involving the same piece of equipment at other locations (outside of Local 150's jurisdiction, but covered by the same collective bargaining agreement with other IUOE locals).

3. PROCEDURE

There were no procedural rulings made at the hearing which may be challenged. The parties were directed to address in their briefs to the Board the issue of Local 150's purported disclaimer of work and the employer's indication that the award of work should cover not just the completed Burns Ditch project, but also upcoming work where the same hydraulic picker will be used again.

4. LABOR ORGANIZATIONS

The parties present at the hearing stipulated (Bd ex. 2, ¶4) to the labor organization status of both SIU and Local 150.

5. JURISDICTION

The parties present at the hearing stipulated (Bd ex. 2, ¶3) to the factual basis for establishing jurisdiction over Luedtke.

6. THE DISPUTE

The hydraulic picker work at the Burns Ditch project was assigned by Luedtke to employees represented by SIU. Local 150 filed a grievance claiming that the hydraulic picker work should be performed by a Local 150 member.

7. THE ALLEGED VIOLATION(S)

The parties present at the hearing stipulated (Bd ex. 2, ¶9) that there is reasonable cause to believe that SIU threatened to shut the workplace down by means of a strike if Luedtke reassigned the work in dispute from SIU to Local 150.

8. THE WORK IN QUESTION

The work in dispute is the operation of a hydraulic picker used alongside a hydraulic dredge along the shore in Lake Michigan. The hydraulic picker is mounted and (temporarily) fixed on a small barge. The hydraulic picker is used frequently in the mobilization (setup) of the dredging operation to help lay the dredge pipe and the pontoon area where the dredged material (in this case sand) is dumped; this process lasts approximately three days. After mobilization, the hydraulic picker is used for approximately 1-2 hours per day to assist in the dredging operations by, for example, moving the dredge pipe or hoisting an anchor when the hydraulic dredge or pontoon needs to be moved. The hydraulic picker work is typically performed by the two dredge operators, although the field superintendant also operated the hydraulic picker as needed. These employees have other regularly assigned duties and only operate the hydraulic picker when needed.

9. POSITIONS OF THE PARTIES ON DISPUTED ISSUES

Both Luedtke and SIU assert that the work in dispute should be awarded to SIU. Both collective bargaining agreements (SIU and Local 150) cover work connected to hydraulic dredging, arguably including the hydraulic picker work in dispute here. However, both Luedtke and SIU note that the work in question has been assigned to SIU for nearly 20 years, and has never been assigned to Local 150. With regard to Local 150's purported disclaimer of the work, Luedtke asserts that two pending grievances filed by Local 150 concerning the work in dispute indicate that Local 150 has not made a clear and unmistakable disclaimer of the work, and that a 10(k) award remains appropriate. Local 150 did not appear at the hearing (but did indicate prior to the hearing that they may submit a post-hearing brief and/or motion).

10. POSSIBILITY OF VOLUNTARY METHOD OF SETTLING THE DISPUTE

The parties present at the hearing stipulated (Bd ex. 2, ¶10) that there is no agreed-upon mechanism for the voluntary resolution of this dispute.

A Case Service Sheet noting the contact information for the parties and their attorneys is attached.

DATED at Indianapolis, Indiana, this 27th day of January 2010.

Respectfully submitted,



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Case Service Sheet**As of 1/26/2010****Case Number:** 25-CD-00301-001**Case Name:** SEAFARERS INTERNATIONAL UNION, ATLANTIC, GULF, LAKES & INLAND WATERS DISTRICT, NMU, AFL-CIO (LUEDTKE ENGINEERING COMPANY)

<p><u>Charged Party #1 Party:</u> Seafarers International Union, Atlantic, Gulf, Lakes & Inland Waters District, NMU, AFL-CIO</p> <p>520 St. Clair River Drive Algonac, MI 48001</p> <p>E-Mail: torzechowski@seafarers.org</p>	<p><u>Point of Contact:</u> Mr. Tom Orzechowski Jr., Vice President</p> <p>Phone: (810)794-4988 Fax: (810)794-0909 Cell:</p>
<p><u>Charged Party #1 Legal Representative #1:</u> The Seafarers International Union, Atlantic, Gulf, Lakes & Inland Water District, NMU</p> <p>5201 Auth Way Camp Springs, MD 20746</p> <p>E-Mail: sdubin@seafarers.org</p>	<p><u>Point of Contact:</u> Mr. Stanford Dubin, Associate Counsel</p> <p>Phone: (301)899-0675 Fax: (301)899-7355 Cell: (301)602-2507</p>
<p><u>Charging Party #1 Party:</u> Luedtke Engineering Company 111 George Street, P.O. Box 111 Frankfort, MI 49635-0111</p> <p>E-Mail: lud123@benzie.com</p>	<p><u>Point of Contact:</u> Mr. Kurt Luedtke</p> <p>Phone: (231)352-9631 Fax: (231)352-7178 Cell:</p>
<p><u>Charging Party #1 Legal Representative #1:</u> Law Offices of Robert E. Day, P.C. 300 River Place, Suite 5600 Detroit, MI 48207</p> <p>E-Mail: robert@rdaypc.com</p>	<p><u>Point of Contact:</u> Mr. Robert E. Day, Attorney</p> <p>Phone: (313)259-1500 Fax: (313)259-1605 Cell: (313)938-1373</p>
<p><u>Employer Involved #1 Party:</u> Luedtke Engineering Company 111 George Street, P.O. Box 111 Frankfort, MI 49635-0111</p> <p>E-Mail: lud123@benzie.com</p>	<p><u>Point of Contact:</u> Mr. Kurt Luedtke</p> <p>Phone: (231)352-9631 Fax: (231)352-7178 Cell:</p>
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<p><u>Party-In-Interest #1 Party:</u> International Union of Operating Engineers Local 150</p>	<p><u>Point of Contact:</u></p>

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<u>Party-In-Interest #1 Legal Representative #1:</u> IUOE Local 150 6140 Joliet Road Countryside, IL 60525	<u>Point of Contact:</u> Mr. Dale D. Pierson Esq., General Counsel Phone: (708)579-6663 Fax: (708)577-1647 Cell:
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