

BEFORE THE NATIONAL LABOR RELATIONS BOARD

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In the matter of:

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

Charged Party,

And

LUEDTKE ENGINEERING COMPANY,

Case no. 25-CD-301

Charging Party,

And

INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL 150,

Party In Interest

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**POSITION STATEMENT ON BEHALF OF THE  
SEAFARERS INTERNATIONAL UNION ATLANTIC GULF  
LAKES AND INLAND WATERS DISTRICT/NMU, AFL-CIO**

**I. BACKGROUND**

This matter was heard on Tuesday, January 26, 2010 pursuant to Section 10(k) of the National Labor Relations Act. The work in dispute involved in this proceeding is the operation of a hydraulic picker utilized on the Burns Ditch

jobsite in Portage Indiana by Luedtke Engineering Company. (NLRB Exhibit 2 Stipulation)

## **II. THE FACTS**

### **1. The Work**

The work involved in this matter was assigned by Luedtke to the Seafarers International Union Atlantic, Gulf, Lakes and Inland Waters District/NMU, AFL-CIO (SIU) on or about November 1, 2009. (NLRB Exhibit 2 Stipulation) Local 150, International Union of Operating Engineers (Local 150) filed two grievances challenging Luedtke's assignment. The first grievance alleges that the hydraulic picker work belongs to members of Local150. (NLRB Exhibit 4). The second grievance alleges that the employer failed to conduct a pre-job conference. (Employer Exhibit 6)

Luedtke was awarded the Burns Harbor project in late summer 2009 by the Army Corps of Engineers. (Tr. 33)<sup>1</sup> The project involved dredging sand from the Small Burns Boat Harbor which is used by recreational vessels. (Tr.39) Luedtke dredged approximately six to eight feet of sand to deepen the Harbor to 12 feet. (id.) The hydraulic dredge sucked up the sand like a vacuum cleaner from the harbor and then pumped it out onto the shore to build a beach. The main purpose of the dredging project was to make the Harbor safer. (id.) The project lasted from November 1, 2009 until December 21, 2009. (Employer Exhibit 9) This project period included the period of mobilization, which involved

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<sup>1</sup> References to the Transcript shall be "Tr. ".

moving the equipment to the Harbor, the period of dredging and the removal of the equipment from the work site. (id.)

Various pieces of equipment were utilized for the Harbor dredging. The actual dredging was performed by the Hydraulic Dredge Sue Lyon. (Tr.34) Also used was a 40 by 50 foot dredge tender, which is the barge that held the hydraulic picker, the subject of this matter. (Tr.36) Luedtke also used a work boat, 20 feet long with a 80 horsepower engine and a 45 foot tug boat. (Tr.36-37)

The hydraulic picker is similar to a crane with a hydraulic system driven by a diesel engine. (Tr.40) The picker was mounted, and in fact was welded down to the dredge tender. (Tr.51) It was welded to the barge for the entire project. (id.)

The picker was used more during the mobilization and set up phase of the project and during demobilization. During mobilization the picker was used all day assembling the pipeline and setting up the dredge. (Tr.54) Once the actual dredging began the picker was used only one to two hours per day to handle the pipeline and the anchors.(id.)

## **2. The Assignment To The Seafarers**

For all hydraulic dredging projects Luedtke assigns the entire work top to bottom to the SIU. (Tr.23) Luedtke has assigned this work to the SIU members since 1991 pursuant to the Collective Bargaining Agreement between the SIU and Luedtke. (Tr. 24 and Employer Exhibit 2) Article I Recognition of the Agreement between the SIU and Luedtke provides that dredging work includes employees employed on dredges including land equipment engaging in and

assisting hydraulic dredges in the construction, maintenance and repair of dredge pipes. (Employer Exhibit 2) The hydraulic picker falls within this recognition language.

Prior to 1991 members of Local 485, International Brotherhood of Teamsters (Local 485) were the recipients of Luedtke's hydraulic dredge work. (Tr. 31) In 1991 the IBT disclaimed the work and it was transferred to the SIU. (Tr. 31-31 and Employer Exhibit 8) An agreement was signed between Teamsters, Local 485, the SIU and Luedtke which provided that Local 485 disclaimed the hydraulic dredge work as provided in its Collective Bargaining Agreement with Luedtke and the SIU agreed to accept Local 485 members who were performing the hydraulic dredging work as SIU members. Luedtke agreed to recall the named individuals back to work, but now as SIU members.

No evidence was presented at the hearing that members of Local 150 ever worked a hydraulic picker or any other piece of equipment during hydraulic dredging.

### III. DISCUSSION

Section 10 (k) requires the Board to make an affirmative award of the disputed work considering various factors. **Columbia Broadcasting**, 364 U.S. 573 (1961) Such relevant factors are the collective bargaining agreements, skill and ability, preference of the employer, past practice and other awards or findings.

The Collective Bargaining Agreement between the SIU and Luedtke clearly covers the work in question. All work associated with hydraulic dredging is clearly covered by the Agreement and the hydraulic picker work comes within this definition. The evidence clearly shows that SIU members are capable of operating the picker. During the course of the project the foreman, the dredge operators and the tug captain all operated the hydraulic picker. (Tr.59) As noted above, the only time the picker was operating full time was during the mobilization phase of the project. At all other times the picker was used only an hour or two per day.

Kurt Luedtke, President of Luedtke, testified that the Company prefers SIU members for the hydraulic dredging work. (Tr.78) Luedtke prefers the SIU members because of the Company's experience with SIU manned crews and their training. (id.)

These same three parties were involved in a previous case under Article XX of the AFL-CIO Constitution dispute resolution provisions. (Employer Exhibit 7) That matter involved hydraulic dredging by Luedtke on Wolf Lake spanning the Illinois-Indiana border. Local 150 filed grievances with Luedtke challenging the Company's assignment of the work to the SIU members. The Neutral Umpire found Local 150 in violation of Article XX. The Umpire found that, "...by attempting to substitute itself for SIU it violated its obligation to 'respect the established collective bargaining relationship of [an] other affiliate,' ..." (Employer Exhibit 7 at page 10) Luedtke was not a party to the Article XX case.

#### **IV. CONCLUSION**

The NLRB should award the members of the SIU with the right under its jurisdiction to perform all work involving the hydraulic picker, or any other piece of equipment associated with hydraulic dredging as assigned by Luedtke.

Respectfully submitted,

/s/ Stanford Dubin  
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Dated this 2<sup>nd</sup> day of February 2010.

## CERTIFICATE OF SERVICE

I, Stanford Dubin, hereby certify that on February 2, 2010 a copy of the Position Statement On Behalf Of The Seafarers International Union Atlantic, Gulf, Lakes and Inland Waters District/NMU, AFL-CIO was served by e-mail to the following:

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