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**Pacific Northwest Regional Council of Carpenters
and Brand Energy Services, LLC and Laborers
International Union.** Case 19–CD–499

June 11, 2010

DECISION AND ORDER QUASHING
NOTICE OF HEARING

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND PEARCE

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). Brand Energy Services, LLC (the Employer or Brand), filed a charge on March 2, 2009, alleging that the Pacific Northwest Regional Council of Carpenters (Regional Carpenters) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Laborers International Union (LIUNA). A hearing was held on May 4–5, 2009, before Hearing Officer Clinton Newman.¹ Thereafter, LIUNA, Regional Carpenters and Brand filed briefs, the Building and Construction Trades Department (BCTD) and the North American Contractors Association (NACA) filed a brief as amici curiae in support of LIUNA, and Regional Carpenters filed an answering brief.²

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer’s rulings, finding them free from prejudicial error. On the entire record, we make the following findings.

I. JURISDICTION

The parties stipulated that the Employer is a Delaware corporation engaged as a contractor in the construction industry in the business of building scaffolding. The Employer has a facility in Longview, Washington, from which it has purchased and received more than \$50,000 in goods and services from out-of-state sources during the 12-month period prior to the hearing. The parties also stipulated that, during the same period, the Employer provided services to customers located outside the

¹ Prior to the hearing, LIUNA filed two motions, both of which sought to dismiss the unfair labor practice charge and quash the notice of hearing. The Regional Director summarily denied each motion.

² The amici curiae’s motion for leave to file brief is hereby granted. Additionally, Regional Carpenters’ motion to correct transcript is granted.

state of Washington exceeding \$50,000 in value. The parties further stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Regional Carpenters and LIUNA are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background

This case concerns a dispute over certain scaffolding work at the REC Silicon Plant expansion project (REC Project) in Moses Lake, Washington. Fluor Constructors International, Inc. (Fluor) is the general contractor on the REC Project. Fluor is signatory to the National Construction Agreement (NCA), a project labor agreement between the NACA and the BCTD that is available for application to jobsites on a project-by-project basis.

The NCA provides that the employer will subcontract work on the particular project only to firms that are party to the NCA. It also provides that any contractor or subcontractor working on the project shall become signatory to the NCA and perform all work under its terms. The NCA includes a provision on jurisdictional disputes. Article 15, “Craft Jurisdiction,” states:

All signatory Employers to this project agree to assign work and be bound to the terms and conditions of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry. All jurisdictional disputes between or among the parties to this agreement will be settled in accordance with the procedural rules and regulations of the Plan.

Fluor applied for and was granted approval by the BCTD in 2006 to use the NCA on the REC Project.

LIUNA also is signatory to the NCA. Regional Carpenters is not a signatory, but its parent, the United Brotherhood of Carpenters (UBC), is signatory to the NCA. According to its bylaws, Regional Carpenters was formed through the affiliation of UBC locals in the states of Washington, Oregon, Idaho, Montana, and Wyoming. The parties stipulated that Regional Carpenters is “an intermediate body under the Labor Management Reporting and Disclosure Act.”³

³ Under the United Brotherhood of Carpenter’s organizational structure, which was reconfigured in 1996, virtually all representational functions are performed by regional councils rather than local unions. Local unions can employ only clerical employees. All representatives and organizers are employees of regional councils. Regional Carpenters bylaws and trade rules, sec. 3; see also *Harrington v. Chao*, 280 F.3d 50, 53–54 (1st Cir. 2002), on remand 286 F. Supp.2d 80 (D. Mass. 2003), reversed 372 F.3d 52 (1st Cir. 2004).

In 2008, Brand entered into a collective-bargaining agreement with Regional Carpenters covering the States of Washington and Oregon as well as northern Idaho. The agreement, entitled, “Scaffolding and Shoring Agreement,” required that Brand exclusively use employees represented by Regional Carpenters for building scaffolding. The Scaffolding and Shoring Agreement’s jurisdictional dispute provision stated as follows:

Jurisdictional disputes that cannot be resolved at the local level shall be referred to the International Unions involved for a determination. Any determination made pursuant to this provision shall be final and binding on the disputing unions and the involved Employer on the relevant project only.

Unlike the NCA, the Scaffolding and Shoring Agreement did not incorporate the Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the Plan). It did, however, contain the following “inferiority clause”:

In the event the Employer enters into project labor agreements or site agreements subsequent to the date of execution of this Agreement, the provisions of which conflict with the terms of this Agreement, the terms of the applicable project labor agreement or site agreement shall take precedence over this Agreement.

Regional Carpenters is also party to an arrangement that allows its represented employees to work on construction projects covered by BCTD agreements even though its parent union, the UBC, had disaffiliated from the BCTD. On July 26, 2007, Regional Carpenters signed a document entitled “Participation Agreement between the Building and Construction Trades Department, AFL–CIO, Washington State Building & Construction Trades Council, AFL–CIO, and Pacific Northwest Regional Council of Carpenters.” The Participation Agreement stated that it constituted “an application by the Local Union, for a Department Participation Charter for the purposes of affiliating with the Washington State Building & Construction Trades Council, AFL–CIO.”⁴ The Participation Agreement included the following provision concerning jurisdictional disputes:

The traditional jurisdictional dispute resolution procedures under the Department’s Constitution shall apply to jurisdictional disputes among and between the affili-

⁴ The Agreement incorporated the Participation Charter that the BCTD simultaneously granted to Regional Carpenters. The Charter authorized “the above-named local union” to affiliate with the Washington State Building & Construction Trades Council, AFL–CIO. At the hearing, the parties used the term “Solidarity Charter” to refer to both the Participation Agreement and the Participation Charter.

ates of the Department, their affiliated subordinate bodies and the Local Union and its subordinate bodies.

The jurisdictional dispute resolution procedure provided under article X of the BCTD’s constitution is the Plan.

B. Instant Dispute

Fluor awarded the scaffolding work on Phase 4.0 of the project to Brand. Brand began work on Phase 4.0 in 2008, using employees represented by Regional Carpenters.⁵ On February 24, 2009,⁶ Regional Carpenters’ representative, Doug Tweedy, sent a letter to Brand’s attorney, Steven Atkinson. The letter stated that “the Laborers Union [is] demanding that Brand assign certain Carpenters work to the Laborers” at the REC Project and that “if Brand attempts to reassign any work performed by Carpenters, we will strike and picket your client’s projects to protect our work.” On March 2, Brand filed the instant unfair labor practice charge.

On about March 9, LIUNA filed a challenge with the Plan concerning Brand’s assignment of the work to employees represented by Regional Carpenters. On March 11, Brand signed a letter of assent covering Phase 4.0 subcontracting work on the REC Project, thereby binding itself to the NCA.⁷ Brand signed the letter of assent because Fluor instructed it to do so, according to Nigel Lyons, Brand’s northwest division general manager.

Arbitrator Pierson conducted a hearing on LIUNA’s challenge under the Plan on March 20. In his March 23 decision, the arbitrator awarded the work to employees represented by LIUNA, finding that Regional Carpenters was bound to the Plan by virtue of the UBC’s ratification of the NCA, and further finding that, pursuant to the practice in the industry, Brand’s assignment of the work to employees represented by Regional Carpenters was improper and that the work should be assigned to employees represented by LIUNA.

On April 14, LIUNA submitted a request to the NCA Joint Labor Management Administrative Committee (JAC)⁸ to interpret certain language in the NCA regard-

⁵ A company called Brand Scaffold Rental and Erection, headquartered in California, performed the scaffolding work in the prior expansion phase, Phase 3.0, also using employees represented by Regional Carpenters. Brand Scaffold Rental and Erection then decided to “open an operation in Longview, Washington, and move into the state of Washington as Brand Energy Services,” according to Nigel Lyons, Brand’s northwest division general manager. The precise legal relationship between Brand Energy Services and Brand Scaffold Rental and Erection was not established in the record.

⁶ All subsequent dates are in 2009, unless otherwise indicated.

⁷ The parties stipulated that Brand was bound to the NCA. Previously, on May 22, 2007, Brand Scaffold Rental and Erection had signed a letter of assent covering Phase 3.0 of the Project.

⁸ The JAC is composed of representatives of six national construction contractors and six construction unions.

ing the meaning of the provision that “local unions” were bound to the terms of the NCA. The NCA empowers the JAC “to resolve any dispute over the intent of this agreement.”⁹ In response to LIUNA’s request, the JAC issued a written interpretation on April 23, unanimously finding:

[O]nce the NCA is approved by the [BCTD] for a specific project, the Agreement binds not only the signatory International Union(s) and their respective local unions but also any and all other subordinate or intermediate bodies/organizations of the signatory International Union(s) regardless of the nomenclature used by said International Union(s).

The JAC panel that rendered this interpretation was composed of an equal number of employer and union representatives and did not include any of the parties to the case.

C. Work in Dispute

The parties stipulated that the work in dispute consists of “scaffold tending, stocking, and tending carpenters in the erection of scaffolding exceeding 14 feet in height at the REC Moses Lake Expansion Project, Moses Lake, Washington.”

D. Contentions of the Parties

LIUNA contends—along with amici BCTD and NACA—that the notice of hearing should be quashed because the parties are bound by the Plan, an agreed-upon method for voluntary adjustment of the dispute. LIUNA and the amici further contend that Brand is not subject to two competing jurisdictional dispute procedures, because the NCA’s “supremacy clause” and the Scaffolding and Shoring Agreement’s “inferiority clause” establish that the NCA takes precedence over the Scaffolding and Shoring Agreement. LIUNA additionally contends that Regional Carpenters is bound to the Plan because it agreed to the Participation Agreement and because the Scaffolding and Shoring Agreement provides an “inferiority clause” in favor of the NCA.

Regional Carpenters urges the Board not to quash the notice of hearing, contending that: (1) the plain language of the NCA binds only the UBC and the “local affiliates,” and thus not Regional Carpenters; (2) the plain language of the Participation Agreement binds only “local unions”; (3) Brand is bound to competing dispute mechanisms because it is signatory to both the Scaffolding and Shoring Agreement and the NCA; (4) there was no “actual adjustment” of the dispute; and (5) the arbitration award is not entitled to weight under Board law.

⁹ NCA, sec. 4-3.

In agreement with Regional Carpenters, Brand contends that Regional Carpenters is not bound to the NCA or to the Plan and that Brand faces two potentially competing dispute mechanisms.

E. Applicability of the Statute

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the Act, there must be reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires finding that there is reasonable cause to believe that: (1) there are competing claims for the disputed work among rival groups of employees;¹⁰ (2) a party has used proscribed means to enforce its claim to the work in dispute;¹¹ and (3) the parties have not agreed to a method for the voluntary adjustment of the dispute.¹² On this record, we find that this standard has not been met. Specifically, we find, in agreement with LIUNA and amici BCTD and NACA, that all parties are bound to the Plan, which constitutes an agreed-upon method for the voluntary adjustment of the dispute.¹³

It is undisputed that Brand and LIUNA are parties to the NCA and, therefore, are bound to the Plan. We find that Regional Carpenters also is bound to the Plan, both because it is a party to the NCA and also because it is signatory to a Participation Agreement with the BCTD and the Washington State Building and Construction Trades Council. As indicated above, both of these agreements require that jurisdictional disputes be resolved through use of the Plan.

1. Regional Carpenters is bound by the NCA

As set forth in its preamble, the NCA applies to the national and international unions that sign it “and those local unions affiliated with such National and International Unions who accept the terms of this Agreement by virtue of accepting the benefits of the Agreement on specific pro-

¹⁰ *Carpenters Local 275 (Lymo Construction Co.)*, 334 NLRB 422, 423 (2001).

¹¹ See, e.g., *Electrical Workers Local 3 (Slattery Skanska, Inc.)*, 342 NLRB 173, 174 (2004).

¹² *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005).

¹³ *Operating Engineers Local 139 (Allied Construction)*, 293 NLRB 604, 605–606 (1989) (Plan found to be agreed-upon method for the voluntary adjustment of dispute). Although Regional Carpenters contends that there was no “actual adjustment” of the dispute, it is not necessary for there to be an actual adjustment. Rather, Sec. 10(k) requires only a showing that there exists a method of voluntary adjustment of the dispute. *Plumbers Local 447 (Capitol Air Conditioning)*, 224 NLRB 985, 988–989 (1976).

In view of our finding that the standard has not been met because all parties are bound to an agreed-upon method for the voluntary adjustment of the dispute, we need not address the other elements of the standard.

jects covered by the Agreement and/or by referring employees to work on such projects.” Regional Carpenters meets the definition of entities to which the NCA applies. Its parent union, the UBC, is a signatory to the NCA. Additionally, Regional Carpenters accepted the benefits of the NCA on the REC Project and referred employees to work on it. Brand General Manager Lyons testified that Brand obtained additional carpenters when needed on the REC Project by requesting Regional Carpenters to dispatch them. Further, employees represented by Regional Carpenters were employed by two other contractors on the REC Project—Garco Construction and Harder Mechanical—that made payments to Regional Carpenters’ benefit funds on their behalf. Representatives of both companies testified that the work they performed on the REC Project was done under the NCA. Thus, Regional Carpenters accepted the benefits of the NCA through the benefit fund contributions generated by its represented employees working on that project.

We further find that Regional Carpenters is encompassed within the term “local unions” as used in the above-quoted NCA preamble language. The NCA, like all project labor agreements, is designed to standardize and make uniform the terms and conditions under which entire projects will be carried out. The NCA itself, in “Article 1, Purpose,” states that “[i]t is also the intent of the parties to set out standard working conditions for the efficient prosecution of said construction work.” This purpose was explicated by the BCTD’s director of field services, William Koczorowski, who is administrator of the NCA and other national agreements and a member of the Steamfitters Union, which is not involved in this dispute. He testified as follows:

A National Agreement standardizes the working conditions for all the crafts that are working on the project, such as starting times, quitting times, no-strike provisions. It makes the process rather than a National contract[or] . . . having to deal with 15 Local Unions, he deals under this one agreement and it standardizes all their collective bargaining agreements into this.

Consequently, given that uniformity of working conditions is the goal of project labor agreements, it is highly implausible that the NCA’s drafters and signatories intended that its provisions would apply to international unions and their local affiliates on a project but not to intermediate union entities working on the same project. Such patchwork coverage would permit nonuniform project working conditions

and, thus, defeat the purpose of such agreements.¹⁴ Indeed, Koczorowski further testified:

I’ve been administrating this agreement since 1996, and . . . [i]t’s always been understood that a Local Union, whatever you want to call them, a lodge, a District Council are bound by the same terms and conditions by virtue of the General President’s signature.

In addition, the JAC, in its written interpretation, found unanimously that the NCA “binds not only the signatory International Union(s) and their respective local unions but also any and all other subordinate or intermediate bodies/organizations of the signatory International Union(s) regardless of the nomenclature used by said International Union(s).” The JAC is the body authorized by the NCA itself to resolve disputes over the NCA’s intent. We find no basis for disregarding the JAC’s instructive ruling.

Further, the NCA is not silent about regional entities. Rather, in Section 3-3, it provides that the NCA supercedes “regional/area” agreements, as well as others, unless specifically incorporated in the NCA. The NCA, therefore, must be presumed to cover and apply to regional union entities that make such agreements.

Blake Construction Co. v. Laborers International Union of North America, 511 F.2d 324 (D.C. Cir. 1975), lends support to finding that a project labor agreement applies to all union entities engaged in the covered project. In that case, the court found that an earlier version of the NCA applied to Laborers’ District Council of Washington, D.C. and Vicinity and Local Union 74, even though the council and local, while named in the agreement, were not signatories to the agreement. The court stated:

It would be anomalous to permit local units to enjoy the benefits of bargaining agreements and yet to rid themselves of the duties concomitantly imposed simply because the agreements are signed only by the parent unions.

...

[T]he contract is obviously intended to cover relationships other than those between its signers. And it is manifestly unreasonable to assume that Blake or any other employer contemplated a collective-bargaining

¹⁴ See *Local 292, Sheet Metal Workers (Gallagher-Kaiser Corp.)*, 264 NLRB 424, 429–430 (1982) (project agreement, by its very nature, was applicable to entire project; contention that it bound only parties who signed the same contract rejected, because such an interpretation would result in the agreement governing only a small portion of the project work).

agreement that did not mutually obligate parties with whom Blake would be dealing directly to abide by its terms.¹⁵

Accordingly, we agree with the JAC that, in using the term “local unions,” the NCA intended to cover all union entities subordinate to national and international unions, rather than including some subordinate bodies and excluding others.

Regional Carpenters contends that the UBC could not bind it to the NCA because the UBC is not its agent. However, Regional Carpenters’ Assistant Executive Secretary Cass Prindle testified that the UBC is a superior body to Regional Carpenters. This fact is reflected in Regional Carpenters’ bylaws, as they recognize the superior authority of the UBC to sign agreements. The bylaws provide that Regional Carpenters “shall have the exclusive power and authority to negotiate, ratify, and execute Collective Bargaining Agreements for and on behalf of its affiliated Local Unions *except to the extent the International Union exercises its jurisdiction or authority.*”¹⁶ Accordingly, Regional Carpenters’ argument that the UBC could not bind it to the NCA lacks merit.¹⁷

Regional Carpenters’ contention that finding it bound to the NCA would subject Brand to two potentially conflicting jurisdictional dispute resolution procedures also lacks merit. As noted above, the NCA supersedes regional and other agreements that are not specifically incorporated in the NCA. Additionally, the Scaffolding and Shoring Agreement, through its inferiority clause, specifically yields to conflicting project labor agreements. This case differs, then, from those that Regional Carpenters cites in which the Board found that there was no determinative private dispute resolution mechanism.¹⁸ In each of those cases, an employer was bound to two

contracts, which provided varying methods for resolving jurisdictional disputes. In the present case, the NCA and the Scaffolding and Shoring Agreement do not conflict but, rather, are in agreement that the NCA’s provisions prevail. Accordingly, Brand could not be subject to the jurisdictional dispute resolution procedures of both the NCA and the Scaffolding and Shoring Agreement.

2. Regional Carpenters is bound by the Participation Agreement

Even apart from the NCA, Regional Carpenters is bound independently to the Plan by having entered into the Participation Agreement.¹⁹ As noted above, the Participation Agreement requires that the Plan be used to resolve jurisdictional disputes “between the affiliates of the Department, their affiliated subordinate bodies and the Local Union and its subordinate bodies.”

Although Regional Carpenters signed the Participation Agreement, it contends that only its member locals, and not Regional Carpenters itself, are bound by the agreement because the “parties” provision in the agreement identifies it as the “Pacific Northwest Regional Council of Carpenters on behalf of its Washington State Locals (‘Local Union’),” and the Agreement refers several times to “the Local Union.” We find this argument unpersuasive. Regional Carpenters is composed of the UBC locals of five states, while the Participation Agreement is an agreement with only the Washington State Building and Construction Trades Council. Consequently, the phrase “on behalf of its Washington State Locals” more likely signifies that the agreement extends only to Regional Carpenters’ locals within the State of Washington, rather than that Regional Carpenters itself is not a party to the agreement.

Additionally, the agreement is entitled “Participation Agreement between the Building and Construction Trades Department, AFL–CIO, Washington State Building & Construction Trades Council, AFL–CIO, and Pacific Northwest Regional Council of Carpenters” without any additional “on behalf of locals” language. Similarly, the Participation Charter, which is incorporated in the Participation Agreement, provides, without mention of local unions, that the “Pacific Northwest Regional Council of Carpenters shall have such rights and privileges as established by the Participation Agreement.”

Although the Participation Agreement refers several times to “the Local Union,” BCTD Field Services Director Koczorowski testified that the Participation Agreement is a boilerplate document used mainly for local

¹⁵ 511 F.2d at 329, 330 (footnotes omitted).

¹⁶ Regional Carpenters bylaws and trade rules, sec. 18 (emphasis added).

¹⁷ In support of its contention, Regional Carpenters relies on *Whisper Soft Mills, Inc. v. NLRB*, 754 F.2d 1381 (9th Cir. 1984). That decision, however, unlike the present case, did not concern whether an international union acted as the agent of its subordinate regional council. Rather, that case presented the opposite question: whether the regional council acted as an agent of its parent international union. There, as only the international was certified as the bargaining representative of the unit, the court found that the employer had no duty to bargain with the regional council. Likewise, in *Shimman v. Frank*, 625 F.2d 80, 97 (6th Cir. 1980), the court found an international union not liable for the acts of its local, stating “[t]he acts of the local...cannot automatically be imputed to the International.” Other agency cases that Regional Carpenters cited are similarly nondispositive.

¹⁸ *Operating Engineers Local 14-14B (Island Lathing)*, 325 NLRB 370 (1998); *Operating Engineers Local 318 (Kenneth E. Foeste Masonry)*, 322 NLRB 709 (1996); *Operating Engineers Local 150 (Austin Co.)*, 296 NLRB 938 (1989).

¹⁹ Because Regional Carpenters signed the Participation Agreement, there is no issue regarding the UBC acting as Regional Carpenters’ agent with respect to the Participation Agreement.

unions. The term “Local Union” within the document undoubtedly is part of the boilerplate language. In the Participation Agreement signed by Regional Carpenters, it is apparent from the context that the term “Local Union” refers to Regional Carpenters. For example, the Participation Agreement provides that the “Local Union’s” right to participate in the affairs of the Washington State Building and Construction Trades Council is “contingent on the Local Union paying to the Washington State Building and Construction Trades Council a fee” equivalent to the per capita tax. Regional Carpenters’ Assistant Executive Secretary Prindle acknowledged that Regional Carpenters pays affiliation fees to the Washington State Building and Construction Trades Council. Indeed, Regional Carpenters is the “largest per capita paying group” in the Washington State Building and Construction Trades Council, according to the uncontroverted testimony of Mark Reavis.²⁰ Regional Carpenters could not become affiliated with and pay fees to the Washington State Building and Construction Trades Council were it not for the Participation Agreement and Participation Charter, according to Reavis’ and Koczowski’s uncontroverted testimony.

We therefore find that, in signing the Participation Agreement, Regional Carpenters was not merely acting as an agent for its locals, but rather obtained its own rights and incurred its own obligations under that agreement. Accordingly, as a party to the Participation Agreement, Regional Carpenters is bound to the Agree-

²⁰ Reavis, a local LIUNA officer, is also a delegate to the Washington State Building and Construction Trades Council and a state AFL-CIO vice president.

ment’s requirement that the Plan be used to resolve jurisdictional disputes.²¹

In sum, we find that Regional Carpenters is bound to the Plan both through the NCA and through the Participation Agreement and that LIUNA and Brand are indisputably bound to the Plan through the NCA. Accordingly, because all parties are bound to submit jurisdictional disputes to the Plan, which constitutes an agreed-upon method for the voluntary adjustment of the dispute, we shall quash the notice of hearing.

ORDER

The notice of hearing issued in this proceeding is quashed.

Dated, Washington, D.C. June 11, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²¹ Cf. *Operating Engineers Local 139 (Allied Construction)*, 293 NLRB 604, 606 fn. 6 (1989) (where employer association was signatory and named as a party to a contract, Board rejected association’s contention that it was not bound by the contract because it negotiated the contract only on behalf of an individual employer).