

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

DEMAND ELECTRIC, INC.

and

**Case Nos. 29-CA-30433
29-CA-30493**

**UNITED ELECTRICAL WORKERS OF
AMERICA, LOCAL 363, IUJAT**

**LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO**

and

Case No. 29-CB-14504

**UNITED ELECTRICAL WORKERS OF
AMERICA, LOCAL 363, IUJAT**

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Demand Electric, Inc.

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Local 3, IBEW

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in Brooklyn, New York on March 16, 2011. The charge in 29-CA-30433 was filed on October 15, 2010 and the charge in 29-CA-30493 was filed on November 23, 2010. The charge and the amended charges in 29-CB-14504 were filed on October 19, December 17 and December 28, 2010.

A Consolidated Complaint was issued by the Regional Director on January 11, 2011. This alleged as follows:

1. That notwithstanding the fact that Local 363 had been duly recognized by the Employer as the collective bargaining agent for its electrical employees and was the lawful representative pursuant to Section 9(a) of the Act, the Respondent employer, on or about June 2010, granted recognition and entered into a collective bargaining agreement with Local 3 IBEW. It is also asserted that the contract between the Employer and Local 3 contained a union security clause requiring employees to become members of Local 3.

2. That by the aforesaid conduct, the Respondent employer violated Section 8(a)(1), (2) and (3) of the Act.

3. That by the aforesaid conduct, the Respondent has withdrew recognition from Local 363 and refused to bargain in violation of Section 8(a)(5) of the Act.

4. That by the aforesaid conduct Local 3 violated Section 8(b)(1)(A) and (2) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the arguments of counsel, I make the following:

Findings of Fact

I. Jurisdiction

The parties agree and I find that the Employers is engaged in commerce as defined in Section 2(6) and (7) of the Act. I also find that both unions involved in this case are labor organizations within the meaning of Section 2(5) of the Act.

II. The alleged violations of the Act.

The facts in this case are not in dispute.

Demand Electric Inc., is engaged in providing electrical contracting services in the construction industry in New York. Its president is Andreas Koukourmeilis and employs about eight electricians.

In or about December 2005, the Employer recognized Local 363 as the collective bargaining representative for its electrical employees. At about the same time, it joined the Building Industry Electrical Contract Association which had a collective bargaining agreement on behalf of its employer-members with Local 363. As a member of that Association, Demand Electric agreed to be bound by that contract.

On November 20, 2008 the Association and Local 363 executed a memorandum of agreement whereby the parties agreed to modify the existing contract and extend it through November 30, 2011. On November 30, 2008, the Employer executed a memorandum of agreement whereby it adopted the agreement that was negotiated between the Association and Local 363. There is no dispute that the Employer has, pursuant to the terms of the contracts with Local 363, made various contributions to that union's benefit funds.

In or about May or June 2010, Mr. Koukourmeilis approached representatives of Local 3, IBEW about the possibility of entering into a contract with that labor organization. He did this because he was interested in being able to bid for publicly funded jobs; work that would be under Project Labor Agreements that required electrical contractors to have an agreement with Local 3. After several meetings, he agreed to recognize Local 3 as the representative of his electrical workers. This is memorialized in a document signed by Koukourmeilis on June 9, 2010. By the same document, he also agreed to be bound by Local 3's existing collective bargaining agreement with the New York Electrical Contractors Association which was to run until May 11, 2010.

According to Koukourmeilis, he had second thoughts about signing up with Local 3 and refused to make payments to Local 3's benefit funds. As a consequence, Local 3 filed an unfair labor practice charge against Demand Electric. When the Region discovered that Demand already was bound to a contract with Local 363, it decided to dismiss Local 3's charge and issue the instant Complaint against Demand and Local 3.

I note here that at no time during the discussions that led up to Demand's recognition of Local 3, was that union informed that the Company already had a contract with Local 363. As it was the employer who approached Local 3 seeking a contractual relationship and as Local 3, had no knowledge of the Company's existing relationship with Local 363, it is clear to me that Local 3 was duped and had no intention to violate the Act by accepting recognition under the circumstances as they were then known to its representatives.¹

Analysis

In this case we have two union's claiming the right to represent the same employees of a single company.

The Employer in this case had recognized Local 363 in 2005 and had agreed to be bound to that Union's contract with an employer association. This was reaffirmed in 2008 and by the terms of a document executed by the Employer, it agreed to be bound to a collective bargaining agreement that was not set to expire until November 31, 2011. As the Employer's recognition of Local 363 occurred in 2005, it cannot be challenged at this time because of the provisions of Section 10(b) of the Act. *Gibbs & Cox Inc.*, 280 NLRB 953, 967 fn. 21 (1986). Therefore, it is presumed that Local 363 had majority support at the time of recognition. Additionally, the law also affords Local 366 an irrebuttable presumption of majority standing during the life of its contract that runs from December 1, 2008 to November 31, 2011. *Hajoca Corp.* 291 NLRB 104 (1988).

Because the Employer, in June 2010, had an existing contractual relationship with Local 363, it was not free to recognize and enter into a contract with another labor organization for the same employees. Nor was it free to withdraw recognition from Local 363.

Therefore based on the above, I conclude that when the Employer recognized Local 3 and entered into a contract with that union, at a time when it was obligated to honor its contract with Local 363, it violated Section 8(a)(1) and (2) of the Act. Additionally, as the contract to which it agreed to bound contains a union security clause requiring its employees to join Local 3 and pay dues to that organization, I conclude that the Employer violated Section 8(a)(1) and (3) of the Act. Finally, as the Employer's actions in this case amounted to a withdrawal of recognition from Local 363 during the life of its contract with that union, I conclude that it violated Section 8(a)(1) and (5) of the Act.

With respect to Local 3, IBEW, the facts show that it was the Employer that approached it about making a contract and that recognition was accepted and a contract was made at a time when Local 3's representatives were unaware and had not been put on notice that the Employer already had a contract with Local 363. It therefore is clear that in these circumstances, where the Employer was seeking to gain an economic benefit by making an arrangement with Local 3, that this union was essentially duped. Unfortunately, the fact that Local 3 unwittingly entered into a contract in circumstances where it was unaware that the Employer already had an agreement with another labor organization cannot serve as a defense. *International Ladies' Garment Workers' Union, AFL-CIO (Berhard-Altman Texas Corp.) v. NLRB*, 366 US 731 (1961).

¹ As the Employer is engaged in the construction industry, it would have been perfectly legal under Section 9(f) of the Act for Local 3 to have entered into a collective bargaining agreement with it if Demand's employees had been unrepresented.

Conclusions of Law

1. By recognizing and entering into a collective bargaining agreement with Local 3, IBEW, such contract containing union security and dues check off clauses, the Respondent Demand Electric Inc., has violated Section 8(a)(1), (2) and (3) of the Act.

2. By accepting recognition from Demand Electric as the representative of its employees and by entering into collective bargaining agreement containing union security and dues check-off clauses, the Respondent, Local 3, IBEW, has violated Section 8(b)(1)(A) and (2) of the Act.

3. By withdrawing recognition from Local 363, IUJAT at time when that Union enjoyed an irrebuttable presumption of majority status, the Respondent Demand Electric Inc., has violated Section 8(a)(1) and (5) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

Remedy

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

It is recommended that the Employer be ordered to withdraw and withhold recognition from Local 3, IBEW and to cease and desist from giving force or effect to any collective bargaining agreement covering its employees, unless and until that Union is certified by the Board as the collective-bargaining representative of the employees.

It is further recommended that Local 3, IBEW be ordered to cease and desist from acting as the bargaining representative of the aforesaid employees or give effect to its contract with the Employer unless and until it is certified by the Board as the collective-bargaining representative of the employees.

It is additionally recommended that the Employer and Local 3, IBEW be ordered, jointly and severally, to reimburse all present and former employees who joined Local 3 for all initiation fees, dues, and other moneys which may have been exacted from them together with interest thereon as set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977).

Finally it is recommended that the Employer recognize and bargain with Local 363 IUJAT and to abide by the existing collective bargaining agreement. To the extent that the Employer may have not paid wages or benefits to its employees as required by the contract, it is recommended that it be ordered to make the employees whole, with interest, for such amounts.

Because Local 3 was an unwitting party in this case, it seems somewhat unfair to require it to post a notice. However, it is customary practice of the Board to require the posting of notices and it has reversed Judges who failed to provide for notices. See for example, *Windstream Corp.*, 352 NLRB 510 (2008). I shall therefore recommend that it post the Notice attached hereto as Appendix B.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended ²

ORDER

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A. The Respondent, Demand Electric Inc., its officers, agents, and representatives, shall

1. Cease and desist from

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(a) Recognizing and entering into a collective bargaining agreement with Local 3, IBEW and cease giving affect to the union security and dues check off clauses of that contract, unless and until that labor organization is certified by the Board as the collective bargaining representative of such employees.

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(b) Withdrawing recognition from Local 363, IUJAT at time when that Union had an irrebuttable presumption of majority status.

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(c) In any like or related manner interfering with, restraining or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(a) Withhold recognition from Local 3, IBEW, as the representative of its employees unless and until that Union has been certified by the Board as their exclusive collective-bargaining representative.

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(b) Jointly and severally with Local 3, IBEW reimburse all former and present employees employed for all initiation fees, dues, and other moneys which may have been exacted from them with interest thereon in the manner provided in the remedy section of this Decision.

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(d) Within 14 days after service by the Region, post at its Astoria, New York facility, copies of the attached notice marked "Appendix A" ³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or

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² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 9, 2010.

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(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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B. The Respondent, Local 3, IBEW, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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(a) Acting as the collective-bargaining representative of the employees of Demand Electric Inc., unless and until it is certified by the Board as the collective bargaining representative of such employees.

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(b) Maintaining or giving any force or effect to any collective bargaining agreement between it and Demand Electric Inc., until it is certified by the Board as the collective bargaining representative of such employees.

(c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(a) Jointly and severally with Demand Electric Inc., reimburse all former and present employees for all initiation fees, dues, and other moneys which may have been exacted from them with interest thereon in the manner provided in the remedy section of this Decision.

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(b) Within 14 days after service by the Region, post at its Astoria, New York facility, copies of the attached notice marked "Appendix B" ⁴ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 9, 2010.

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⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5 Dated at Washington D.C., March 29, 2011.

10 Raymond P. Green
Administrative Law Judge

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APPENDIX A
NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT recognize or enter into a collective bargaining agreement with Local 3, IBEW, and **WE WILL NOT** give effect to the union security and dues check-off clauses of that contract, unless and until that labor organization is certified by the Board as the collective bargaining representative of our employees.

WE WILL NOT withdraw recognition from Local 363, IUJAT at time when that Union had an irrebuttable presumption of majority status.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL withhold recognition from Local 3, IBEW, as the representative of our employees until and unless that Union has been certified by the Board as their exclusive collective-bargaining representative.

WE WILL jointly and severally with Local 3, IBEW, reimburse with interest, all former and present employees employed for all initiation fees, dues, and other moneys which may have been exacted from them.

WE WILL upon request, recognize and bargain with Local 363, IUJAT as the collective bargaining representative of our electrical employees and abide by the collective bargaining agreement to which we are bound.

Demand Electric, Inc.

(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two MetroTech Center, Suite 5100, Jay Street and Myrtle Avenue

Brooklyn, New York 11201-3838

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.

**APPENDIX B
NOTICE TO MEMBERS
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT act as the collective-bargaining representative of the employees of Demand Electric unless and until we are certified by the Board as the collective bargaining representative of such employees.

WE WILL NOT maintain or give any force or effect to any collective bargaining agreement between us and the above named employer, unless and until we are certified by the Board as the collective bargaining representative of such employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL jointly and severally with the employer, reimburse with interest, all former and present employees for all initiation fees, dues, and other moneys which may have been exacted from them.

**Local 3, International Brotherhood of Electrical Workers,
AFL-CIO

(Labor Organization)**

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

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Hours: 9 a.m. to 5:30 p.m.
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