

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 196

Union,

and

Case No. 13-CD-68444

ALDRIDGE ELECTRIC, INC.

Employer,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150

Party-In-Interest.

LOCAL 150's POST-HEARING BRIEF

STATEMENT OF CASE

On October 6, 2011, Aldridge Electric, Inc. (“Aldridge” or “Employer”) filed a charge with the National Labor Relations Board, Region 13, in which it alleged that the International Union of Operating Engineers, Local 150, AFL-CIO (“Local 150”) violated Section 8(b)(4)(D), 29 U.S.C. § 158(b)(4)(D), of the National Labor Relations Act (O.E. Ex. 4; Tr. 134). Since there was no evidence that Local 150 engaged in any conduct proscribed by Section 8(b)(4)(D), Aldridge withdrew the unfair labor practice charge (Tr. 134).

On November 8, 2011, Aldridge filed another Section 8(b)(4)(D) charge—this time against the International Brotherhood of Electrical Workers, Local 196 (“Local 196”) (Board Ex. 1(a)). On the face of the charge, Aldridge alleged that Local 196 and Local 150 both claimed certain work (*id.*). On November 28, 2011, Region 13 issued a Notice of Hearing, in

which it scheduled a hearing pursuant to Section 10(k) of the Act, 29 U.S.C. § 160(k), for December 8, 2011 (Board Ex. 1(h)).

On December 6, 2011, Plan Arbitrator Paul Greenberg convened a hearing for the limited purpose of determining whether all three parties to this dispute (Aldridge, Local 196 and Local 150) are bound or stipulated to the AFL-CIO's Plan for the Settlement of Jurisdictional Disputes in the Construction Industry ("Plan") and therefore required to submit jurisdictional disputes to the Plan for resolution. Later that day on December 6, after considering the evidence and the arguments presented by the parties, Plan Arbitrator Greenberg issued a written decision in which he held that Aldridge, Local 196 and Local 150 are all stipulated to the Plan (O.E. Ex. 1, p. 11-12). Upon making that finding, Plan Arbitrator Greenberg ordered the IBEW to "advise Aldridge and the [NLRB] that it will not take any action, including picketing, to enforce any claim it may have to the disputed work, but that IBEW will invoke the Plan to settle any disputes" (*id.* at 12). In addition, Arbitrator Greenberg ordered Aldridge to "take all steps necessary to withdraw its unfair labor practice charge before the National Labor Relations Board, and shall advise the Board that the Plan has jurisdiction to consider and resolve any jurisdictional disputes" (*id.*). Based on testimony at the 10(k) hearing, neither Aldridge nor Local 196 intend to comply with Plan Arbitrator Greenberg's decision (Transcript of Proceedings conducted December 8, 2011, hereafter "Tr." at 69, 132-133).

On December 8, 2011, two days after Plan Arbitrator Greenberg issued his decision, Region 13 conducted a hearing pursuant to Section 10(k) of the Act, 29 U.S.C. § 160(k), regarding an alleged dispute concerning the following work:

Installing a series of 144 count fiber optic links throughout the following Illinois counties: Joe Daviess, Stephenson, Whiteside, Carroll, Lee, Ogle, Boone, Winnebago, and LaSalle, pursuant to the iFiber project. Type of work covered is the installation of duct or conduit, installation of hand holes, installation of fiber

optic cable along roadways, overhead and underground, fiber splicing, installation of splice boxes, and all related work to complete construction of fiber install using manual installation methods, cable plows and other heavy machinery such as bulldozers.

Local 150 now files this brief in support of its position that the Board should quash the Notice of Hearing or, in the alternative, award the disputed work to Local 150.

STATEMENT OF FACTS

Aldridge is a contractor that installs fiber optic cable (Tr. 19). Aldridge has collective bargaining agreements with Local 150 and Local 196 (Tr. 19, 123-25, 151-52, 159-161, O.E. Ex. 2, O.E. Ex. 3). The CBA to which Aldridge is bound with Local 150 is commonly referred to as the Rockford 9-County Heavy and Highway Agreement (Tr. 147-148, O.E. Ex. 3). Aldridge uses Local 150's hiring hall in Rockford, Illinois (Tr. 126-27, 154) and pays the wages and fringe benefits set forth in the Rockford 9-County Agreement for work performed by Local 150 members (Tr. 127, 155-57).

The Rockford 9-County Agreement also contains a subcontracting clause that provides (O.E. Ex. 3, p. 4, Sec. 5):

The Employer agrees that he will not contract or subcontract any work covered by the Scope of this Agreement and/or work coming under the occupational jurisdiction of the Union to be done at the site of construction, alteration, painting, or repair of a building, structure, or other work, except to a person, firm or corporation, party to the applicable current labor agreement with the Union.

In addition, The Rockford 9-County Agreement provides that Local 150 and the Employer will submit all jurisdictional disputes to the Plan for resolution. Specifically, Article XIII, Section 2 provides (O.E. Ex. 3, p. 34; Tr. 174) (emphasis added):

Unless determined by Jurisdictional Award as hereinafter set forth, all work that has been heretofore performed under agreement or by custom or by area practice with any other local organization shall continue to be performed until such Jurisdictional Award is made. Whenever a jurisdictional dispute shall arise between local labor organizations, the provisions of this Agreement shall prevail until a Jurisdictional Award has been made by the proper Jurisdictional Board of

International Unions of which the local disputing Labor Organizations are members. The Employer agrees to abide by such Jurisdictional Award, but there shall be no work stoppage while the settlement of the dispute is pending. It is further agreed that the Employer will abide by such mutual agreement reached between the Local Union and other Local Unions and the International Union, including, but not limited to the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry.

Aldridge is currently working on the iFiber optics project in the following Illinois counties: Joe Daviess, Stephenson, Whiteside, Carroll, Lee, Ogle, Boone, Winnebago, and LaSalle (Tr. 111). Specifically, Aldridge has been contracted by iFiber to install fiber optic cabling systems along the right-of-ways, for installing new fiber optic cable into public buildings and various areas (*id.*). Aldridge began work on the project in August 2011 (Tr. 38); the expected completion date is July 2012 (Tr. 144).

The Rockford 9-County Agreement covers the operation of heavy equipment used on fiber optic projects, such as the iFiber project (Tr. 148-152). The Rockford 9-County Agreement also requires Local 150 and the Employer to convene a pre-job conference prior to the start of any projects (O.E. Ex. 3, p. 5). On June 17, 2011, Mike Kresge, Local 150 Business Agent, sent a letter to Aldridge requesting a pre-job conference (IBEW Ex. 13). On June 22, 2011, Eric Patrick, Business Manager of Local 196, sent a letter to Aldridge wherein he threatened the Local 196 would picket Aldridge “if work [was] improperly taken away from Local 196” (IBEW Ex. 6). At the hearing, Patrick explained that he sent the letter because Local 150 had requested a pre-job conference with Aldridge (Tr. 100). Patrick conceded, however, that he did not know if Local 150 and Aldridge ever convened a pre-job conference (Tr. 101).

After the project began, Local 150 filed grievances against Aldridge alleging violations of the subcontracting clause in the Rockford 9-County Agreement (Tr. 128-29; 174). Notably, Aldridge Vice President Wayne Gearig admitted to a Region 13 Field Agent that it was his

“understanding that some of the subcontractor employees on [the iFiber project] are Local 150 members who cleared in through Local 196 for purposes of [the iFiber] project” (Tr. 129; *see also* Tr. 139).

On October 6, 2011, after receiving the “threat” letter from Local 196, Aldridge filed an unfair labor practice charge against Local 150 in which it alleged a violation of Section 8(b)(4)(D) (O.E. Ex. 4). Aldridge later withdrew the charge after learning from Region 13 Board Agent Paul Prokop that an 8(b)(4)(D) charge may only be filed against a labor union that actually threatens to picket a job site (Tr. 135).

On November 8, 2011, Aldridge filed a second 8(b)(4)(D) charge—this time against Local 196. Between November 8 and December 8 (the date of the 10(k) hearing), Eric Patrick from Local 196 and Wayne Gearig from Aldridge had roughly ten conversations (Tr. 80). Gearig met with Patrick and counsel for Local 196 to prepare the case (Tr. 136) and even provided Local 196 with evidence to use in the hearing (Tr. 137). Gearig made clear, however, that counsel for Local 196 did not represent Aldridge (*id.*). Charging Party Aldridge was not represented by counsel at the 10(k) hearing and did not present a case at the hearing (Tr. 2). Instead, Local 196 called Wayne Gearig as a witness in its case-in-chief (Tr. 108).

ARGUMENT

I. THE BOARD SHOULD QUASH THE NOTICE OF HEARING¹

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that: (1) there are competing claims for the work in question; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and,

¹ At the outset of the hearing, Local 150 brought a Motion to Quash which was admitted into the record by the hearing officer (Tr. 9-11). There, as now, Local 150 argued that the decision by Arbitrator Greenberg finding that all parties were stipulated to the Plan “divest[ed] the Board of the power to resolve the jurisdictional dispute under Section 10(k).” NLRB Casehandling Manual Sec. 10216.

(3) the parties have not agreed on a method for the voluntary adjustment of the dispute. *Laborers Local 113 (Super Excavators)*, 327 NLRB No. 31 (1998). None of the elements are satisfied in this case.

A. Local 150 Did Not Claim Any Work.

A jurisdictional dispute “is a dispute between two or more groups of employees over which are entitled to do certain work for an employer.” *NLRB v. Radio and Television Broadcasters*, 364 U.S. 573, 579 (1961). Congress enacted Sections 8(b)(4)(D) and 10(k) of the Act “to protect employers from being ‘the helpless victims of quarrels that do not concern them at all.’” *Id.* at 580. “In the construction industry, a union’s action through a grievance procedure, arbitration, or judicial process to enforce an arguably meritorious grievance against a general contractor...does not constitute a claim for the work, provided that the union does not seek to enforce this position by engaging in or encouraging strikes, picketing or boycott or by threatening such actions.” *Capitol Drilling Supplies*, 318 NLRB 809, 810 (1995). In other words, “seeking a Board award of the work through a 10(k) proceeding is no longer an option for the beneficiaries of the contract breach unless the bargaining representative of the employees of the general contractor expands its contractual dispute by making a direct claim to the subcontractor for the assignment of the work or uses coercion or threats of coercion to enforce its position.” *Capitol Drilling*, 318 NLRB at 811 (emphasis in original).

In this case, Local 150 requested that the Employer participate in a pre-job conference, as required by the CBA; Local 150 later filed subcontracting clause grievances when it learned the Aldridge subcontracted work in violation of the subcontracting clause in the parties’ CBA. None of these actions constitute a claim for any work, as a matter of law. There is no evidence in this record that Local 150 ever made a direct claim to any of the subcontractors for any work

assignments. Wayne Gearig testified that Mike Kresge, Local 150 Business Agent “disagreed” with Aldridge’s work assignment (Tr. 142). A disagreement is not an affirmative claim for work. And there is no evidence in this record that Local 150 sought to enforce its position by picketing or threatening to picket (Tr. 134). Local 150 is not challenging any of Aldridge’s work assignments for work it is self-performing. Local 150 filed arguably meritorious grievances over Aldridge’s breach of the subcontracting clause in the parties’ CBA. On this record, *Capitol Drilling* controls. There is no evidence of any claim for any work from Local 150, as a matter of law. Consequently, the Board should quash the Notice of Hearing.

B. There Is No Reasonable Cause to Believe that Section 8(b)(4)(D) Has Been Violated.

The Board will not find reasonable cause to believe that Section 8(b)(4)(D) has been violated upon a showing that the “threat was a sham or the product of collusion.” *Superior Construction Co.*, 340 NLRB No. 150, fn. 4 (2003), quoting *C.J.S. Lancaster*, 325 NLRB 449, 450-451 (1998). In this case, there is substantial evidence that Local 196’s threat to picket Aldridge was not a credible threat sufficient to establish reasonable cause to believe that Section 8(b)(4)(D) was violated. Instead, there is substantial evidence in this record of collusion between Aldridge and Local 196. This evidence reveals that Local 196’s strike threat was simply a sham designed to trigger a Section 10(k) hearing.

Eric Patrick testified that Local 196 complies with all its obligations in its CBA (Tr. 62). He knew of no occasion in which Local 196 failed to comply with its no-strike obligations in the CBA at issue in this case (*id.*). Patrick acknowledged that the CBA contains a no-strike clause and that striking a signatory contractor would constitute violation a of the contractual no-strike clause (Tr. 63). And, in fact, Local 196 has never picketed Aldridge (Tr. 105). Notably, Patrick

could not identify a time when Local 196 had picketed any employer to force a work assignment (Tr. 76).

As explained above, Patrick testified that he sent the “threat” letter on June 22, 2011, after learning that Local 150 had requested a pre-job conference with Aldridge (Tr. 100) – an unremarkable event in the construction industry. The collusive nature of Local 196’s “threat” becomes clear when one considers that Aldridge responded to the “threat” by filing a Section 8(b)(4)(D) charge against Local 150, not Local 196 (Tr. 134). Wayne Gearig conceded at the hearing that Local 150 never threatened to picket Aldridge (Tr. 139; *see also* Tr. 74). These facts demonstrate Local 196’s “threat” letter was only designed to initiate Section 10(k) proceeding. Indeed, Patrick admitted at the hearing that he decided going “to the Board” was a good way to resolve the dispute (Tr. 83). He also conceded that he was going to “work with Aldridge” to get the dispute to the Board and “have it resolved” in his favor (Tr. 97). Patrick’s testimony that he was going to “work with Aldridge” is an admission that Local 196 was colluding with Aldridge.

Significantly, the record reflects that Local 196 and Aldridge did, in fact, work together.² After it became clear Aldridge had no valid charge against Local 150, Aldridge filed an 8(b)(4)(D) charge against Local 196. As explained above, Patrick and Gearig spoke at least ten times in the month leading up to the Section 10(k) hearing and Gearig met with Patrick and counsel for Local 196 in preparing for the hearing, and discussed Gearig’s testimony with them (Tr. 136). Aldridge itself was unrepresented at the hearing by counsel (Tr. 2, 6, 16, 137). Local 196’s strike “threat” was not a legitimate threat; instead, it was a sham designed to trigger

² Gearig from Aldridge sat with Local 196’s Patrick and the IBEW lawyer at the hearing before the Region and openly collaborated in the presentation of Local 196’s case. Aldridge apparently voluntarily gave the letter it received from Local 150 seeking a pre-job conference (IBEW Ex. 13) to Local 196 for presentation at the hearing (Tr. 118-119).

these 10(k) proceedings. There is no reasonable cause in this record to believe that Local 196 violated Section 8(b)(4)(D). Therefore, the Board should quash the Notice of Hearing.

C. All Three Parties Have Agreed To Submit Their Jurisdictional Disputes to The Plan.

The Plan constitutes an agreed-on method for the voluntary adjustment of jurisdictional disputes. *Allied Construction Employers' Assoc. (Operating Engineers, Local 139)*, 293 NLRB 604, 605 (1989). At issue is whether Aldridge, Local 196 and Local 150 are all bound to the Plan. This is a unique case since this issue was resolved by an arbitrator *prior* to the opening of the record in the Section 10(k) hearing. “If by the time the dispute reached the Board, arbitration has already taken place, the Board shows deference to the arbitral award, provided the procedure was fair and the results were not repugnant to the Act.” *Carey v. Westinghouse Elec. Corp.*, 375 U.S. 261, 270-71 (1964). On December 6, 2011, Plan Arbitrator Greenberg convened a hearing to determine if Aldridge, Local 196 and Local 150 were all stipulated to the Plan. Local 196 and Aldridge had notice of the hearing; neither party attended the hearing (Tr. 66-67, 138). Wayne Gearig testified that he had notice of the hearing but decided not to go (Tr. 138). Similarly, Eric Patrick testified that he had a discussion with Gearig after receiving the notice of hearing for the Plan arbitration (Tr. 81). Patrick told Gearig that he did not believe Local 196 was bound to Plan (Tr. 82)—this was quite presumptuous since this was the ultimate issue in the Plan arbitration. Patrick reiterated his belief that the proper way to resolve the dispute was the NLRB hearing (*id.*). Although Patrick did not attend the hearing, the IBEW was represented at the hearing by International Representative Jim Ross (Tr. 66).

At the outset of his decision issued on December 6 (two days before the Section 10(k) hearing), Plan Arbitrator Greenberg noted that “there was no dispute that IBEW is stipulated to the Plan” (O.E. Ex. 1, p. 6, fn. 3).³ Plan Arbitrator Greenberg also observed that the Plan Administrator issued an opinion letter wherein he stated, “where an affiliate of the IUOE and a contractor are parties to a collective bargaining agreement in which they have agreed to process jurisdictional disputes through the Plan, the case will be processed by the Plan” (*id.*; see also O.E. Ex. 7; Tr. 65). Thus, the issue at the arbitration was whether the Rockford 9-County Agreement (O.E. Ex. 3, p. 35) contained language that stipulated Local 150 and Aldridge to the Plan.

After thoroughly analyzing the contract language in Article XIII, Section 2 of the CBA, Arbitrator Greenberg concluded that Local 150 and Aldridge are in fact bound to the Plan. In particular, Arbitrator Greenberg held (O.E. Ex. 1, p. 11-12):

For the reasons stated above, I find Aldridge and IUOE Local 150 are in a collective bargaining relationship pursuant to the Rockford Nine County Agreement. I further find that Article XIII of the agreement constitutes a stipulation to the Plan, and the Plan therefore has jurisdiction over this matter.

At the Section 10(k) hearing, IBEW Local 196 argued that it was not bound to the Plan despite its affiliation with the IBEW because it was an “outside branch” (Tr. 86). This argument is flawed for several reasons. First, the IBEW International Representative did not raise this argument before Plan Arbitrator Greenberg; the argument is therefore waived. Second, the

³ The Plan is applicable to all international and national unions affiliated with the AFL-CIO’s Building and Construction Trades Department and their local constituent bodies. *Allied Construction Employers’ Assn.*, 293 NLRB at 606 (1989). The International Brotherhood of Electrical Workers is affiliated with the AFL-CIO’s Building and Construction Trades Department (Tr. 86). Therefore, as a local constituent body (Tr. 64), IBEW Local 196 “is likewise required to abide by the Plan’s procedures for the settlement of jurisdictional disputes.” *Allied Construction Employers’ Assn.*, 293 NLRB at 606, citing *Plumbers Local 441 (Capitol Air Conditioning)*, 224 NLRB 985, 986-7 (1976); *Painters Local 203 (E.O. Brunner Plastering Co.)*, 234 NLRB 235 (1978).

IBEW supported this argument with hearsay evidence (Tr. 84-85). Local 196 presented no credible evidence to support the proposition that Local 196 is not bound to the Plan, despite its affiliation with the IBEW. Finally, the self-serving position taken by Local 196 is inconsistent with a position taken by a sister IBEW “outside” line local in a jurisdictional dispute in Southern California. Specifically, in *LIUNA, Local 1184 (High Light Electric, Inc.)*, 335 NLRB No. 29 (2010), IBEW Local 440 argued the Board lacked jurisdiction to resolve the parties’ jurisdictional dispute since all three parties were bound to the Plan. In evaluating the argument, the Board noted that it was undisputed the IBEW Local 440 was bound to the Plan through its parent international union, IBEW. *Id.* Significantly, the work in dispute in *High Light Electric* was: the installation of conduit, boxes, vaults, fiber optics, attaching devices, mandreling and concrete encasement of duct banks. *Id.* That is, the work in dispute in *High Light Electric* was virtually identical to the work at issue in this case.

Counsel for Local 196 also made a suggestion at the 10(k) hearing that the award is not binding on Local 196 because the Plan Arbitrator Greenberg’s decision references “IBEW” and not “Local 196” (Tr. 68). This argument offends the basic notion that “Judges expect their pronouncements to be read in context...” *Wisehart v. Davis*, 408 F.3d 321, 326 (7th Cir. 2005). That is, cases are not to be read in a vacuum, but in light of their facts. *Penry v. Lynaugh*, 492 U.S. 302, 358 (1989) (Scalia, J. concurring, in part; dissenting, in part). There can be no serious question that the issue before Plan Arbitrator Greenberg was whether Aldridge, Local 196 and Local 150 were stipulated to the Plan. That Plan Arbitrator Greenberg may have swapped “IBEW” and “Local 196” in his decision does not change the nature or scope of his findings or the relief granted.

Plan Arbitrator Greenberg's decision establishes that all three parties to this dispute have agreed to submit their jurisdictional disputes to the Plan for resolution. There was no evidence or argument presented that Arbitrator Greenberg's award stemmed in any way from a procedural unfairness. Given the Act's preference for voluntary adjustment of labor disputes, 29 U.S.C. § 171, and the Board's policy decision to defer jurisdictional disputes to the Plan, NLRB Casehandling Manual Sec. 10216, the Arbitrator's decision directing the parties to submit their dispute to the Plan can hardly be considered "repugnant to the Act." The Board should defer to that finding, *Carey*, 375 U.S. at 270-71, and quash the Notice of Hearing.

II. In the Event the Board Reaches the Merits of this Dispute, It Should Award The Work To Local 150.

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). Employer preference is not dispositive. *Chicago Regional Council of Carpenters (Complete Thermal Systems, Inc.)*, 354 NLRB No. 73 (2009). Instead, The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402 (1962). In this case, the cumulative weight of all the relevant factors favors an award of the work to Local 150.

Local 150 and Local 196 both have collective bargaining agreements with the Employer, so this factor favors neither party. *Laborers Local 113 (Super Excavators)*, 327 NLRB 113, 115 (1998) (This factor does not favor any union if both (or all three) have collective bargaining agreements with the contractor). Eric Patrick's testimony about the purported 9(a) status of the Local 196 CBA should be discredited since he was unable to provide any foundational support for his legal conclusion (Tr. 60-61). In any event, Patrick was not claiming Board certification.

Moreover, the area and industry practice is mixed (Tr. 94, 106, 140, 151-52, 156-58). In fact, as explained above, Gearig even admitted that it was his “understanding that some of the subcontractor employees on [the iFiber project] are Local 150 members who cleared in through Local 196 for purposes of [the iFiber] project” (Tr. 129; *see also* Tr. 139). That is, Local 150 members are working on the project at issue in this case for subcontractors hired by Aldridge.

Formal training is preferable to on-the-job training. An award of work goes to the unit with more formal training. *Construction & General Laborers’ District Council of Chicago and Vicinity (Henkels & McCoy)*, 336 NLRB 1044, 1045 (2001). Local 150’s thorough and extensive training program for heavy equipment operators has been well-documented by the Board. *See Henkels & McCoy*, 336 NLRB at 1045 (“Local 150’s apprenticeship program involves hundreds of training hours operating heavy equipment used in UG work”). The training received by Local 196 members is provided by Employers (on-the-job training) and by equipment manufacturers (Tr. 56-57, 88). Local 196 offers no training on directional boring machines, trenchers, backhoes or skid steers (Tr. 87-88). This is consistent with the Board’s observation in *Henkels & McCoy*, that Local 196 members are “expected to learn on the job.” 336 NLRB at 1045. Local 150’s superior training favors an award of the work to Local 150. Local 150’s witness was fully conversant in the work involved in the work (Tr. 148-151); while the Local 196 witness struggled to describe it (Tr. 25, 35-36). For these reasons, Local 150 respectfully requests that Board make an affirmative award of the work to Local 150.

III. THE EMPLOYER IS NOT ENTITLED TO A BROAD AWARD.

Even if the Board awards the disputed work to Local 196, it should not issue a broad award. In awarding disputed work pursuant to § 10(k), the Board will limit its award to the particular jobsite at issue. *International Union of Operating Engineers, Local 318 (Foeste*

Masonry, Inc.), 322 NLRB 709 (1996). Indeed, for an Employer to obtain a broad award it must meet a high burden and establish that the disputed work has been a continuing source of controversy in the relevant geographic area, that similar disputes are likely to recur, and that the charged party has a proclivity to engage in unlawful conduct to obtain work similar to the disputed work. *United Assoc. of Journeymen and Apprentices of the Plumbing and Pipe Fitting Indus. of the U.S. and Canada, (C&R Heating & Service Co., Inc.)*, 328 NLRB No. 176, 162 LRRM 1300 (1999). The Board will not impose a broad award in the absence of evidence demonstrating that the union, against which the broad award will lie, has resorted to unlawful means to obtain the work in dispute and such unlawful conduct will recur. *Standard Sign and Signal Co.*, 248 NLRB No. 134; 104 LRRM 1035, 1039 (1980); *Bill Detinger, Inc.*, 282 NLRB No. 90; 124 LRRM 1073, 1074-75; *Krahl's Masonry*, 281 NLRB No. 140; 123 LRRM 1179, 1182 (1986).

Here, the Employer failed to meet its high evidentiary burden. In fact, The Employer did not present any evidence at the hearing. Aldridge representative Wayne Gearig admitted, however, that Local 150 made no threat to picket over the work assignment (Tr. 139). As explained above, it is Local 150's position that Local 196's threat to picket was a sham. In the event the Board concludes Local 196 made a legitimate picket threat, such a finding would preclude the entry of a broad award in favor of Local 196, as a matter of law.

CONCLUSION

For all the above-stated reasons, Local 150 respectfully requests the Board to quash the Notice of Hearing. If the Board decides to make an affirmative award of the work in this case, Local 150 respectfully requests the Board to award the disputed work to Local 150. If the Board awards the work to the Local 196, Local 150 respectfully requests that the Board enter a site-specific award.

Dated: January 13, 2012

Respectfully submitted,

/s/ Dale D. Pierson

One of the Attorneys for Local 150

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that he caused a copy of the foregoing document, to be served on the following:

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via facsimile and U.S. First Class Mail, proper postage prepaid, on or before 5:00 p.m. on January 13, 2012.

/s/ Dale D. Pierson

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