

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

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)	

POST-HEARING BRIEF

Submitted On Behalf Of
IBEW Local 196

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Argument

A. A jurisdictional dispute exists.

The classic jurisdictional dispute addressed by 8(b)(4)(D) is a “contest between two groups of employees that actively contend for the work and where the assigning employer is indifferent to the claims of the rival unions.” Longshoremen, ILWU Local 62-B v. NLRB, 781 F.2d 919, 923 (D.C.Cir. 1986). A jurisdictional dispute exists when the employer is caught “between the devil and the deep blue.” NLRB v. Radio and Television Broadcast Engineers Union, Local 1212, 364 U.S. 573, 575, 81 S.Ct. 330, 334 (1961).

The disputed work involves the iFiber optics project in various Illinois counties, including Joe Davies, Stephenson, Whiteside, Carroll, Lee, Ogle, Boone, Winnebago and LaSalle counties in Illinois. (Tr. 24-25). IBEW Local 196 claims the installation of a series of 144 count fiber optic links that is part of that project. (Tr. 25). The iFiber project is a several hundred mile fiber optic project designed to bring broadband to under-served areas. (Tr. 25).

On June 22, 2011, IBEW 196 Business Manager Eric Patrick wrote a letter to Aldridge which accepted the assignment of the disputed work from Aldridge and threatened to picket if Aldridge removed the assignment. (IBEW Exhibit 6).

Aldridge Electric Vice President Wayne Gearig testified that he took the threat by IBEW Local 196 to picket as credible. (Tr. 117). The picketing, if realized, would have

shut down the jobsite and exposed Aldridge to a potential contract violation with the owner. (Tr. 118).

B. No Voluntary Dispute Mechanism Exists

The critical issue in our case is whether Aldridge Electric and IBEW Local 196 are both bound to the Plan. All the parties must be bound to the Plan for the Plan to have authority to resolve the dispute. Thus, if either Aldridge or IBEW 196 are not bound, the dispute must be resolved only by the NLRB.

An employer is bound to the Plan only when any one of three circumstances exists, namely: (1) that it had executed a written stipulation to be bound by the Plan, or (2) that it is a member of an employer association which had authority to bind its members to the Plan and which exercised that authority by a written stipulation to so bind its members, or (3) that it is a signatory to a collective bargaining agreement which contains a provision that jurisdictional disputes be settled by invoking the plan procedures.

None of these criteria is satisfied by Aldridge. Indeed, the IBEW 196 contracts do not make any reference to the Plan. The contract between Aldridge and Operating Engineers Local 150 contain the following language: "[i]t 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."

The NLRB was aware of this contractual language and rejected the language as binding Aldridge to the Plan. After reviewing the arguments of the parties, the NLRB scheduled a Section 10(k) hearing.

Moreover, prior to the hearing, Operating Engineers Local 150 filed a motion to quash the Section 10(k) hearing on the basis that the Plan had authority to resolve the dispute. The NLRB rejected this motion and proceeded with the hearing as scheduled.

Interestingly, a federal appellate court already rejected Local 150's argument that the NLRB is not the proper venue. See Local 150 v. NLRB, 755 F.2d 78 (7th Cir. 1985).

C. Assignment of the disputed work should be IBEW Local 196.

Under the traditional factors used to determine the assignment of work, IBEW Local 196 must prevail.

1. *Industry practice.*

IBEW Business Manager Eric Patrick testified and presented confirming letters that the industry practice is to use IBEW Local 196 members to perform the disputed work. For example, J. F. Edwards Construction Company, Michaels Corporation, Intren (Trench-It), Gaffney's PMI, and CCS all use IBEW Local 196 members to perform the disputed work.

2. *Aldridge's Past Practice.*

Aldridge Electric Vice President Wayne Gearig testified that Aldridge Electric has used IBEW 196 members in the past to perform the disputed work. (Tr. 120). For example, IBEW Local 196 members were used by Aldridge on "various traffic lighting

jobs, highway jobs, in the cities, on toll roads, with cameras, with fiber optic cabling systems out on toll roads, state highways...intersections.” (Tr. 120). The work of this nature and the use by Aldridge of IBEW Local 196 is “ongoing.” (Tr. 121).

Indeed, Aldridge requests referrals of its employees from IBEW Local 196 and IBEW Local 196 has dispatched employees to work on the iFiber project. (Tr. 121)./

Mr. Gearig also testified that Operating Engineer Local 150 members have not performed the disputed work for Aldridge Electric in the past. (Tr. 117).

3. *Safety, Skill and Efficiency*

Aldridge Electric Vice President Wayne Gearig testified that the use of IBEW Local 196 members to perform the disputed work is more efficient because Aldridge can use the same employees to operate equipment and then utilize them on other job duties. (Tr. 121). The IBEW Local 196 member can “get off the machine, they can help set hand holes, they could place hand holes, they can help in cable pulling. They can move from machine to machine throughout the day. There’s no restrictions. And it’s always been the most economical way to do it to keep us competitive in this market.” (Tr. 121-122).

Mr. Gearig said that the members of Operating Engineer Local 150 could not do the multi-tasking done by IBEW Local 196. (Tr. 122).

As for the skills of IBEW Local 196, Mr. Gearig testified that “We’ve had no quality issues” with IBEW Local 196. (Tr. 122). Moreover, Mr. Gearig said that the IBEW Local 196 members are “doing a good job.” (Tr. 122).

In regards to safety, Mr. Gearig testified that there are “no safety issues on the project, on this iFiber project or any other project that we have employed 196 people on.” (Tr. 122).

4. *Employer Preference*

Aldridge Electric Vice President Wayne Gearig testified unequivocally that the preference of Aldridge Electric is for IBEW 196 members to perform the disputed work. (Tr. 115). The company assigned the work to IBEW 196 in June 2011, before the work had even begun. (IBEW Exhibit 5, Tr. 115-16). The work assignment includes work assignment for subcontractors. (Tr. 116, 122).

5. *Collective Bargaining Agreement*

The collective bargaining agreements between Aldridge and IBEW Local 196 cover the disputed work. (IBEW Exhibits 1, 2, 3, 4)

Conclusion

IBEW Local 196 respectfully requests that the National Labor Relations Board award the work in dispute to IBEW Local 196 employees of Aldridge Electric and its subcontractors.

Respectfully submitted,

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 196

w/ Travis J. Ketterman

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Certificate of Service

The undersigned attorney hereby certified that he caused a copy of the IBEW Local 196 post-hearing brief to be served on the following on January 17, 2012:

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