

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 RESPONSE TO THE
EMPLOYER's MOTION FOR EXPEDITED PROCEEDINGS**

INTRODUCTION

On December 6, 2011, Arbitrator Paul Greenberg convened a hearing for the limited purpose of determining whether all three parties to this dispute (Aldridge Electric, Inc. "Aldridge"; International Brotherhood of Electrical Workers, Local 196 "Local 196"; and International Union of Operating Engineers, Local 150 "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. The Plan Administrator notified all three parties of the scheduled hearing. Later on December 6, Arbitrator Greenberg issued a written decision in which he held that Aldridge, Local 196 and Local 150 are all stipulated to the Plan (Decision attached hereto as Ex. 1, p. 11-12). Upon making that finding, 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.*).

Notwithstanding Plan Arbitrator Greenberg’s decision, Aldridge did not withdraw the pending Section 8(b)(4)(D) charge. Instead, on December 8, 2011, representatives from Aldridge and Local 196 attended and participated in Section 10(k) hearing conducted by Region 13. Notably, Aldridge was not represented by counsel at the hearing (Tr. 6, 16). On December 12, 2011, the NLRB’s Associate Executive Secretary entered an order extending the due date for filing post-hearing briefs to January 13, 2012. On January 13, 2012, Local 150 timely e-filed its post-hearing brief. Four days later, on January 17, 2012, Local 196 filed its post-hearing brief untimely. Aldridge did not file a post-hearing brief. Now Aldridge, through counsel who has not formally appeared in this case, moves for expedited resolution of this case based on facts that are not included in the underlying record.

ARGUMENT

I. Local 150 Does Not Necessarily Oppose Expedited Treatment of This Case.

Local 150 argued, *inter alia*, at the hearing and in its post-hearing brief that the NLRB should quash the Notice of Hearing because the parties have agreed on an alternative method for the voluntary adjustment of this dispute. Local 150 supported this argument by citing to Arbitrator Greenberg’s decision in which he held that all parties to this dispute were stipulated to the Plan. And, of course, 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). Local 150 recognizes and appreciates the large docket

of cases currently pending before the NLRB and does not wish to place any additional burdens on the NLRB. There is no provision in NLRB's Rules and Regulations that allows a party to move for expedited resolution of a case. Nevertheless, Local 150 would certainly welcome a prompt decision from the NLRB finding that the Employer and the IBEW should abide by Arbitrator Greenberg's decision. For that reason alone, Local 150 does not necessarily object to an expedited review of this case.

II. The Employer Improperly Seeks to Re-open the Record and Mischaracterizes Certain Facts.

Aldridge attempts to use its Motion for Expedited Proceedings as a vehicle to re-open the record and introduce new facts. Motions to re-open the record are controlled by Section 102.65(e)(1) of the NLRB's Rules and Regulations. Section 102.65(e)(1) provides, in part:

A party to a proceeding may, because of extraordinary circumstances, move after the close of the hearing for reopening of the record... *** A motion... to reopen the record shall specify briefly... the additional evidence sought to be adduced, why it was not previously presented, and what result it would require if adduced and credited. Only newly discovered evidence—evidence which has become available only since the close of the hearing—or evidence which the Regional Director or the Board believes should have been taken at the hearing will be taken at any future hearing.

Aldridge has not met its burden to re-open the record and submit additional evidence in support of its charge. First, there is nothing “extraordinary” about the present circumstances. Local 150 has a contractual relationship with Aldridge and has filed and advanced grievances against the Aldridge. Second, the “new evidence” of grievances filed by Local 150 does not change the analysis of the underlying case, nor does it change the ultimate relief sought by the parties. There is, in short, no reason to re-open the record.

In advancing its arguments, Aldridge mischaracterizes and misconstrues certain objective facts. For example, the Aldridge appears to have conflated the Plan and the Joint Grievance

Committee. The Plan is an AFL-CIO-sponsored procedure designed to resolve jurisdictional disputes that arise in the construction industry. The Joint Grievance Committee (“JGC”), on the other hand, is a labor-management committee created under the collective bargaining agreement to which Local 150 and Aldridge are signatory and is authorized to resolve grievances if it can do so by a majority vote. In other words, the Plan and the JGC are separate entities with separate objectives.

Aldridge seems to believe that the JGC is a “designee” of the Plan and/or that Local 150 has continued to file grievances with the Plan (Motion at 3-4). The Employer also argues, “Neither Aldridge nor the IBEW participated in any of those proceedings, which were apparently conducted on an *ex parte* basis” (Motion at 4). At no time since Arbitrator Greenberg rendered his decision has Local 150 filed any grievances with the Plan. Instead, Local 150 has submitted unresolved grievances to the JGC, as required by the grievance procedure in its contract with Aldridge, nor has Local 150 ever proceeded *ex parte*. The Employer has had notice of all of the grievances and all of the proceedings before the JGC, but has decided not to attend. The IBEW is not a party to any of the grievances filed by Local 150 against the Aldridge; Local 150 did not, therefore, have any obligation to provide the IBEW with any notice of the grievances and the subsequent proceedings. Notably, Aldridge’s failure to attend the proceedings before the JGC is indicative of the way it handled the earlier proceedings before the Plan. That is, Wayne Gearig testified at the Section 10(k) hearing that he had notice of the hearing before Arbitrator Greenberg but decided not to go (Tr. 138).¹ In any event, the NLRB should not re-open this record to include any of the new facts set forth in Aldridge’s Motion.

¹ Citations to (Tr.____) are to the transcript of December 8, 2011 hearing conducted in NLRB Case No. 13-CD-68444.

III. The Employer Waived its Right to Present Any Legal Arguments in Support of its Charge.

Even though the Aldridge filed the underlying Section 8(b)(4)(D) charge, it did not present a case at the hearing and did not file a post-hearing brief. Instead, Local 196 called Wayne Gearig, Vice President of Aldridge, to testify in its case-in-chief (Tr. 107-108). Local 150 argued in its post-hearing brief that this level of coordination between the Employer and Local 196 revealed that Local 196's strike 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). At a minimum, by failing to advance any arguments at the hearing or at the post-hearing briefing stage, Aldridge waived its right to present any arguments in support of its charge. Consequently, the NLRB should disregard all arguments set forth in Aldridge's Motion.

CONCLUSION

For all the above-stated reasons, Local 150 respectfully requests that the NLRB disregard all new facts and arguments presented by Aldridge in its "Motion for Expedited Proceedings" and enter a ruling in this case on its own schedule.

Dated: April 11, 2012

Respectfully submitted,

/s/ Bryan P. Diemer

One of the Attorneys for Local 150

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on April 11, 2012, he electronically filed a copy of the foregoing with the Executive Secretary of the National Labor Relations Board in Washington D.C. In addition, he caused a copy of the foregoing document, to be served on the following:

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via e-mail, on or before 5:00 p.m. on April 11, 2012.

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