UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 21

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 1184 Charged Party, and HIGH LIGHT ELECTRIC, INC. Employer, and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 440, AFL-CIO Party in Interest.	)	Case No.21-CD-677

CHARGED PARTY UNION'S POST-HEARING BRIEF

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CHARGED PARTY'S POST-HEARING BRIEF

I. INTRODUCTION AND BACKGROUND: THE PARTIES, THE AGREEMENTS AND THE DISPUTED WORK

This matter is before the Board on a charge filed by High Light Electric, Inc. ("High Light" or "Employer") against Laborers International Union of North America, Local Union 1184 (Laborers) in connection with competing claims by employees represented by the Laborers and by International Brotherhood of Electrical Workers, Local 440, AFL-CIO (IBEW) for certain construction work at four of the Employer's projects in Riverside County, California.

At the hearing, the parties stipulated that the Employer is an employer engaged in interstate commerce, and that the unions are both labor organizations within the meaning of the Act [Beard Exhibit (Bd. Ex.) 2 & Transcript (Tr.) 8:7-15]. The parties further stipulated that the Employer is a contractor in the construction industry and is party to two collective bargaining agreements, one with the Southern California District Counsel of Laborers and its affiliated local unions, including the Laborers (Laborers Agreement) [Employer Exhibit (Er. Ex.) 3], and another with the IBEW (IBEW Agreement) [Er. Ex. 1].

Each of these two unions claims that its agreement covers the work in dispute in this action [Tr. 12:18-20:11, 21:8-22:17].[1] High Light employs approximately 50 employees—40 represented by the Laborers, 8 represented by IBEW, and 2 represented by the Operating Engineers [Tr. 44:7-10 & Affidavit of Erwin Mendoza (Mendoza Aff.) 2:10-12].

By letters dated June 29 and 30, 2009, IBEW Business Manager Robert C. Frost wrote to High Light claiming that High Light was violating the IBEW Agreement by assigning work claimed by the IBEW to employees represented by the Laborers at the following jobsites: "the 1900 block of Jurupa," "the metro link station in Perris," "the Magnolia, and 15 Freeway interchange [sic]," and "the La Sierra and 91 Freeway interchange" [Er. Ex 6 & 8]. The June 30 letter described the work in question at the four jobsites as:

> pull in pull strings and wire, set and level pull boxes, and install pvc conduit . . . installing PVC conduit on chairs, and blowing lines in the conduits. . . working out of PTM trucks, setting and leveling pull boxes, and running PVC Conduit into valuts. . . . blowing lines, pushing duct routers, pulling pull strings, pulling wire, setting and leveling pull boxes, and routing and rerouting PVC conduit. [sic]

[Er. Ex 8].

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[1] The Employer is also party to a collective-bargaining agreement with a local union affiliated with the Operating Engineers (Operating Engineers).

Upon being advised that the IBEW had claimed this work, Laborers President William Smith sent a letter to High Light President Erwin Mendoza stating that, if work assigned to employees represented by the Laborers was reassigned to IBEW-represented employees, the Laborers would take "immediate action, including economic action and withhold labor, to ensure the proper assignment of work to Laborers" [Er. Ex 10].

It is the statements in this letter which form the basis for High Light's allegation that the Laborers had "threatened economic action including strike action in furtherance of a dispute over a work assignment which is claimed by IBEW Local 440 . . ." [Bd. Ex. 1(a)]. Finding reasonable cause to believe that the Laborers had violated Section 8(b)(4)(D) of the Act, the Regional Director set this matter for hearing and defined the work in dispute as follows:

> Installation of all types of conduits, foundations, vaults, manholes, HDD (horizontal directional drilling) and any other methods, fiber optics, concrete, asphalt, digging, trenching, shoring, staging, and lay out of materials, attaching, core drilling, saw cutting, anchoring devices, backfill, pot holing, mandreling, and concrete encasement of duck banks.

[Bd. Ex. 1(d), at 1].[2] At the hearing, the parties agreed on the record that the following work contained in the notice of hearing was appropriately assigned to employees represented by the Laborers: installation of foundations and manholes, HDD, concrete, asphalt, digging, trenching, shoring, staging and layout, core drilling, saw cutting, anchoring devices, backfill, and potholing. Accordingly, the IBEW having claimed this work in its letters dated June 29 & 30, 2009 [Er. Ex 6 & 8], the Laborers having claimed this work at all relevant times [Er. Ex. 10 & Tr. 12:18-20:11, 21:8-22:17], and all three parties having agreed on the record that this work was properly assigned to the Laborers-represented employees, the Board should award the aforementioned work to employees represented by the Laborers.

At the hearing, the IBEW reiterated its ongoing claim that the Employer assign the following work to employees represented by the IBEW: installation of conduits, boxes, vaults, and fiber optics; attaching; mandreling; and concrete encasement of duct banks [Tr. 12:18-20:11, 21:8-22:17]. The Laborers and the Employer reiterated that the Employer wished to continue to assign this work to employees represented by the Laborers and

[2] The notice of hearing contains a typographical error and refers to "duck banks" rather than "duct banks." This error should be corrected in any Board order.

that the Laborers intended to continue to accept this assignment and perform this work [Tr. 12:18-20:11, 21:8-22:17, 51:17-23].

No party contested the proposition that there was reasonable cause to believe that the Act was violated and it is apparent that there have been and continue to be competing claims for the work set forth in the notice of hearing. Accordingly, this matter is properly before the Board for resolution of a jurisdictional dispute under Section 10(k) of the Act.

II. ARGUMENT

Although the IBEW claims certain work--namely, installation of conduits, boxes, vaults, and fiber optics; attaching; mandreling; and concrete encasement of duct banks--should be assigned to the employees it represents, the evidence overwhelmingly demonstrates that Employer preference, economy, efficiency, employer area and industry practice, skills and training all support the Employer's assignment of this work to employees represented by the Laborers, the labor organization to which the Employer has extended Section 9(a) recognition for the employees currently performing this work [Er. Ex. 19]. Moreover, while the IBEW claims that the Board is precluded from

making a work assignment because the parties have voluntarily agreed upon an alternative method of resolving the dispute, the evidence on this issue is insufficient to establish that, as a matter of fact, there is such an agreed upon method.

A. THE EVIDENCE FAILS TO ESTABLISH AN AGREED-UPON ALTERNATIVE METHOD OF RESOLVING THE WORK ASSIGNMENT DISPUTE AND, THEREFORE, A BOARD DETERMINATION IS APPROPRIATE

The Board is "empowered and directed" to hear and determine a jurisdictional dispute under Section 10(k) of the Act when there is reasonable cause to believe that a union has violated Section 8(b)(4)(D) by coercing an employer to assign work to a particular group of employees unless the parties have submitted to the Board "satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute." 29 U.S.C. § 158(b)(4)(D) ("Section 8(b)(4)(D)"); 29 U.S.C. § 10(k) ("Section 10(k)"); See also NLRB v. Radio & Television Broadcast Eng. Union, 364 U.S. 573, 579 (1961); see also Recon Refractory & Const., Inc. v. NLRB, 424 F.3d 980, 986 (9th Cir. 2005). Here, it is undisputed that the letter from William Smith to the Employer dated July 8, 2009 [Er. Ex. 10] gave rise to reasonable cause to believe that Section 8(b)(4)(D)

was violated and that there are, and remain, rival claims to the assignment of certain work.

The IBEW, nevertheless, claims that the Board should not resolve the underlying work assignment dispute because the parties are all bound to the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan"), which is a voluntary method of adjustment. See Section 10(k) of the Act ("Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b) [section 158(b) of this title], the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute."). For this argument to have merit, all of the parties to the dispute, including the employer, must have agreed upon the alternative method. NLRB v. Plasterers' Local No. 79, 404 U.S. 116, 137 (1971). However, while none of the parties contend that the unions are not bound to the Plan, there simply is not "sufficient evidence" to support the claim that the Employer is.

Thus, (a) neither the Laborers Agreement nor the IBEW Agreement --the only agreements in the record--provide any evidentiary predicate for an agreement to resolve jurisdictional disputes through the Plan, and (b) the Plan arbitrator's decision cannot itself establish arbitrability either as a legal or evidentiary matter.

There is no direct evidence in the record that High Light stipulated to the Plan; in fact, the evidence in the record suggests that no such agreement exists. The only agreements in evidence--High Light's collective-bargaining agreements with the Laborers and the IBEW—are entirely lacking in any provision requiring or even suggesting that High Light is bound to resolve jurisdictional disputes through the Plan [Er. Ex. 2, at 1-2; Er. Ex. 3 at 15-16].

Lacking any evidence of a written or oral agreement by High Light to make use of the Plan and its procedures, IBEW relies entirely on the decision of a Plan arbitrator [Part in Interest Exhibit (PIX.) 2, hereinafter "Hanft Decision"]. However, it is well-settled that an arbitrator is without jurisdiction to determine whether a party is bound to submit a dispute to arbitration. Thus, whether a party has agreed to arbitration is a question for a court, not an arbitrator. AT&T Technologies,

Inc. v. Communications Workers of America, 475 U.S. 643, 649, 651-52 (1986) (holding that, where the parties had not "clearly and unmistakably provide[d]" for arbitration, the question of whether a certain contract provision could be interpreted as subject to the contract's arbitration clause should have been decided by a court, not an arbitrator).

Moreover, even if there were some argument that the arbitrator had jurisdiction to decide whether High Light had agreed to submit this dispute to the Plan, the award is not competent evidence of that fact because it is inadmissible hearsay used to prove the truth of the matters stated therein See Fed. R. Evid. 802. And even on its own terms, the evidence relied upon by the arbitrator fails to establish that High Light agreed to make use of the Plan. Thus, the Arbitrator recited, without explaining the factual predicate for his recitation, that the mere fact that High Light was a member of the Southern Sierra Chapter of the National Electrical Contractors Association or its parent national association (collectively "NECA") constituted an agreement by High Light to submit its jurisdictional disputes to the Plan [PIX. 2 at 4-5]. This naked finding cannot constitute "sufficient evidence" of an agreed-upon alternative method of adjustment, especially where, as

here, the record contains ample evidence of a specific denial of such an agreement by High Light [E.g. Er. Ex. 22].

B. THE DISPUTED WORK SHOULD BE AWARDED TO THE LABORERS

1. Applicable Principles

In deciding jurisdictional disputes, "each case [is] decided on its own facts," with due consideration to "all relevant factors." International Association of Machinists, Lodge 1743 (Jones Construction Co.), 135 NLRB 1402, 1410 (1962). Among the factors considered are,

> the skills of the work involved, certifications by the Board, company and industry practice, agreements between union and between employers and unions, awards of arbitrators, joint boards, and the AFL-CIO in the same or related cases, the assignment made by the employer, and the efficient operations of the employer's business.

Id., at 1410-11. The question of which group of employees is entitled to perform disputed work "is one for which no absolute rule of law is laid down by statute, and none should be by decision. It involves of necessity a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed." Packard Motor Car Co. v. NLRB, 330 U.S. 485, 491 (1947).

2. The Facts Presented During the Hearing Establish That the Work Should Be Assigned to the Laborers

The disputed work falls into seven categories: installation of conduits, installation of boxes, installation of vaults, installation of fiber optics, attaching, mandreling, and concrete encasement of duct banks, the parties all agreeing that the remaining categories of work listed in the Notice of Hearing were properly assigned to Laborers [Tr. 12:18-20:11, 21:8-22:17]. Each category of disputed work should be assigned to Laborers because: Laborers are the craft to which the Employer assigned the work not just at these jobsites, but at all of its jobsites in the eleven counties covered by the Laborers Agreement;[3] the assignment of this work to Laborers-represented employees is company, area and industry practice; the Laborers-represented employees have the proper skills and training to perform this work; and the assignment of the work to Laborers-

[3] To the extent that IBEW contends that it was entitled to a blanket ruling that all evidence of employer, industry, or area assignment practices outside Riverside County were, per se, to be excluded, this contention lacks merit. These practices are presumptively relevant and, in any event, the absence of a blanket exclusion does not preclude the raising of objections to specific questions. Having absented itself from the hearing, the IBEW cannot now complain of the absence of any such objection that the IBEW might have made had it remained at, and participated in, the entire hearing.

represented employees promotes economy and efficiency of operations.

a. Laborers are the craft that has traditionally performed the disputed job assignments under company and industry practice

High Light President, Erwin Mendoza, testified that, at all times, it has been High Light's company practice to assign all categories of disputed work to Laborers-represented employees [Tr. 48:23-50:11, 125:6-126:5]. On September 22, 2007, High Light signed a Letter of Assignment, explicitly codifying this preexisting practice of assigning work, including

> installations of . . . all conduit, boxes, foundations, vaults, manholes, HDD and any meth [sic], fiber optics, concrete, asphalt, digging, trenching, shoring, staging and lay out of materials, attaching, core drilling, saw cutting, anchoring devices, backfill, pot holing, mandreling and concrete encasement of duck [sic] banks

to Laborers. Id.; Er. Ex. 5.

Industry practice also supports assigning all of the disputed job categories to Laborers. Pat Jeffries, an employee at Doty Bros. Construction Co. with over 30 years of experience in the construction industry, testified that it is Doty Bros. practice in the 11 Southern California counties other than San Diego for Laborers to perform the disputed job assignments.

[Tr. 186:15-187:22, 190:3-198:8]. Michael Rodriguez, Director of Industrial Relations for the Associated General Contractors of California and the former labor relations representative of Skanska Construction, another Southern California construction contractor, testified based on his knowledge of the construction industry in Southern California since 1978 that the disputed job assignments are traditionally assigned to Laborers throughout the industry [Tr. 204:15-207:13].

This uncontroverted evidence of longstanding company and industry practice of assigning the disputed job categories to Laborers weighs heavily in favor of continuing to assign the work to Laborers.

b. Laborers are the craft that is better trained to perform the disputed job assignments

High Light President, Erwin Mendoza, also testified that, based on his review of curriculum, scheduling of classes and review of the facilities, as well as observation of employees working on his jobsites, he believes that Laborers are the craft with the best training to perform the disputed work [Tr. 55:11-18, 61:6-11, 62:20-63:1, 66:3-8, 70:22-71:1, 89:11-95:13]. Because of this training, Mendoza believes that Laborers are

better equipped to perform the work competently and safely [Id. at 51:19-21, 126:6-127:24].

This testimony is supported by evidence of the extensive training program provided by the Laborers Training & Retaining Trust Fund of Southern California [Charged Party Exhibit (CPX.) 1]. The Laborers Training School offers a number of courses that provide Laborers with the training to perform the disputed job assignments safely and effectively. For instance, the 40-hour Pipe Laying Course teaches Laborers the competencies required to perform disputed work such as the installation of conduit and boxes, digging, trenching, and shoring [Tr. at 223:3-224:11, 225:6-10; CPX 1 at 8]. The competencies related to digging, trenching, and shoring are also taught in the Trench Safety course [Tr. 225:6-10; CPX 1 at 9]. The Pipeline Procedures course teaches Laborers competencies related to the disputed attaching work [Tr. 225:19-226:9; CPX 1 at 10]. The Concrete Course teaches Laborers competencies related to the disputed concrete encasement of duct banks [Tr. 224:21-225:5; CPX 1 at 8]. The final categories of disputed work—mandreling and installation of fiber optics—are not covered in any of the courses, but the competencies related to these jobs are either learned by Laborers on the job, or the Laborers Training School

outsources the training to manufacturers and covers the cost thereof [Tr. 224:12-20, 227:6-19]. Many of High Light's Laborers-represented employees enrolled in and successfully completed some combination of these training courses [e.g. CPX 2 at 5, 8, 9, 16, 19, 20, 24, 27].

In contrast, there is no record evidence that IBEW-represented employees have any skills, ability or training in any of these areas.[4] Therefore, this factor weighs heavily in favor of continuing to assign the disputed work to Laborers.

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[4] After adducing its relatively minimal evidence concerning its argument that the parties were bound to resolve their dispute through the procedures of the Plan, the IBEW voluntarily absented itself from the hearing [Tr. 174:14-21]. Nothing precluded the IBEW from adducing evidence concerning the proper assignment of the work. In these circumstances, the IBEW is in no position to attack the undisputed nature of substantially all of the evidence concerning the proper assignment of the work.

To the extent that IBEW argues that the prevailing wage determinations by the California Department of Industrial Relations in any way reflect the group of workers to which certain work must be assigned, this argument is without any factual or legal merit. The California Labor Code merely determines the rate of pay, not the assignment of work. Cal. Lab. Code § 1770 ("Except for public works projects of one thousand dollars ($1000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed . . . shall be paid to all workers employed on public works.")

c. The economical and efficient operation of High Light's business requires that the Employer's historic and preferred assignment of the disputed work to Laborers-represented employees be upheld.

The evidence overwhelmingly demonstrates that because of the multiple tasks that must be performed in relatively rapid succession, the disputed work can only be performed efficiently and economically if it continues to be assigned to Laborers, the craft to which the Employer historically has assigned, and continues to prefer to assign [Tr. 55:11-18, 61:6-11, 62:20-63:1, 66:3-8, 70:22-71:1, 89:11-95:13], this work. As noted, the excavation and shoring of the ditch or trench, laying of conduit, backfilling and related tasks which comprise the work in dispute are not isolated tasks. Rather, they are part of a larger group of tasks described in the Employer's work assignment letter [Er. Ex. 5] which must be completed before wire is run through the conduit and connected. Reassigning parts of that work to another craft would be inefficient because it would disrupt flow of work and require additional workers to be present for the same amount of work.

As both Erwin Mendoza and Pat Jeffries testified, to effectively and efficiently perform the series of tasks at issue in the Notice of Hearing, the crew needs to be able to jump from

task to task as the job progresses [Tr. 62:18-63:13; 190:3-196:20]. The performance of isolated tasks by IBEW-represented employees required by the IBEW's demand for reassignment of certain tasks would be inefficient and uneconomical because rather than having the same group of workers performing a series of different tasks, the work would be fragmented such that the employees of both crafts would have significant periods of idle time while waiting for the other to perform its task or tasks. In particular, Mendoza testified, the IBEW-represented electricians would be mostly idle. According to Mendoza, Laborers would only have five hours of work over an eight hour shift, electrical workers would have three hours of work over an eight hour shift, and High Light "would be paying double the money in that particular timeframe" for the same work [Tr. 4:25-75:21]. The inefficiency of this method of operating is apparent for each of the individual tasks:

Installation of conduit: This involves excavating trenches, laying PVC or other rigid pipe in the trench, and then backfilling the trench. The pipe is installed empty, so installation does not involve live wires [Tr. 54:20-55:2, 58:5-22]. Presently, High Light assigns this work to Laborers because Laborers are already on the job site excavating

trenches, staging the conduit, grading the trench, installing shoring jacks, and doing other tasks in sync with each other; if an electrician were used to lay the conduit, there would be a significant amount of dead or down time for both crafts [Tr. 109:15-112:23]. Moreover, it is not really possible to isolate installation of conduit in horizontally drilled spaces from the drilling itself as the drill pulls the conduit through the drilled space (or "bore hole") and, thus, the task must be performed by the horizontal directional drill operator [Tr. 115:23-116:21; 190:22-192:5]. And given that it is Laborers-represented employees who pothole at both ends of a horizontal directional drilling bore [Tr. 190:22-192:5], any attaching of conduit to the drill is better assigned to these employees, who are already at the pothole doing work when this task needs to be done than to reassign it to another employee who is not otherwise engaged at that spot [Tr. 190:22-192:5].

Installation of boxes: This task involves placing a pre-cast concrete box where conduits intersect. To do so, workers excavate a 2′ x 3′ hole, bed gravel in the hole, manually place the box on the gravel, and then backfill. This process takes approximately 10-15 minutes and does not involve live wires [Tr. 56:25-58:4]. Presently High Light assigns this work to Laborers

because Laborers are already on the jobsite digging, placing gravel, surveying, grading and backfilling the trench [Tr. 56:25-58:4]. Given this, it is efficient to have these same workers install the boxes, while it would be inefficient and uneconomical to bring in a separate worker or group of workers to perform this isolated and relatively brief (ten to fifteen minutes) task [Tr. 57:11-58:4].

Installation of vaults: Vaults are underground chambers that are similar to manholes; they are installed by establishing grade, excavating, shoring, doing turf control, rock bedding, compacting, and installing a pre-cast concrete box. This process generally takes about one hour to complete [Tr. 58:23-59:23]. High Light presently assigns this work to Laborers because it does not involve attaching electrical wires and Laborers are already performing the other related tasks such as shoring, grading and backfill [Tr. 59:24-60:8, 103:21-104:17]. Given this, it is efficient to have these same workers install the vaults, while it would be inefficient and uneconomical to bring in a separate worker or group of workers to perform this isolated task [Tr. 194:18-195:6].

Installation of fiber optics: Fiber optics cables transmit light that carries data signals, not electricity; installation

of fiber optics involves pulling long runs of fiber optic cable without any splices from a reel truck through the vaults and conduits [Tr. 60:9-25]. Presently, High Light assigns the installation of fiber optics to Laborers because Laborers are already the ones doing all of the preparatory work such as loading materials off of the reel truck, so it is more efficient to have them also pull that cable than it would be to pay an electrical worker to stand around during this preparatory work waiting to handle a cable that does not carry any electrical current [Tr. 61:1-11].

Disputed Attaching Work: Mendoza testified that the attaching jobs that were assigned to Laborers at the four Riverside County job sites consisted of attaching beams, joining conduits, bolting and otherwise attaching items to concrete structures, and attaching ladders to manholes [Tr. 61:12-24]. Attaching and grounding of electrical cables was assigned to electrical workers working in composite crews [Tr. 62:1-10]. It is most efficient to assign the disputed attaching work to Laborers because otherwise it would "break the efficiency or the flow of the work as [High Light is] doing the work . . . ." These are ancillary tasks better suited to performance by the workers who are already on the jobsite for the major tasks of

excavation, shoring, staging and laying of conduit, backfilling, surveying and grading [Tr. 62:11-63:21, 118:2-18].

Mandreling: This is a process of checking whether a pipe has an obstruction or was installed incorrectly by projecting, pushing or pulling a properly sized mandrel through the pipe after it has been installed [Tr. 64:1-15]. High Light assigns mandreling to Laborers because they can efficiently perform this task as they are performing other tasks on the job site throughout the day [Tr. 64:20-23].

Concrete encasement of duct banks: This task involves digging a 5- to 10-foot deep trench, shoring the trench, installing the conduit and spacers or stairs, and using a ready-mix truck to fill in the voids between the conduits [Tr. 65:2-17]. High Light assigns this work to Laborers-represented because they are the ones digging and otherwise working in the trench, and are the principal craft involved in a concrete pour [Tr. 65:18-66:13]. Additionally, because concrete encasement of duct banks is routinely performed as part of an overall concrete pour [Tr. 105:19-106:18], it would be extremely inefficient to stop the pouring of concrete and to bring on electricians to perform this single isolated task. Moreover, it would be uneconomical to assign a portion of a concrete pour to

electricians with little or nothing else to do at the site at this stage of the project [Tr. 104:18-106:18].

Electrical cable installation and connection is the principal task assigned to employees represented by the IBEW [Tr. 63:2-13]. Electrical cable is routinely installed at the end of the project to reduce the likelihood of theft of the cable—a major problem in the industry in Southern California [Tr. 124:5-10, 174:24-176:11]. Accordingly, it would be inefficient and uneconomical to restructure the Employer's project installation program to install the wire earlier in order to provide other work for IBEW-represented electricians in between the isolated tasks which they claim [Tr. 124:5-10, 174:24-176:11]. Rather, efficiency dictates that IBEW-represented electricians ground and connect the cables at the end of a project so as to minimize the time in which valuable cable is exposed at the job site [Tr. 124:5-10, 174:24-176:11].

d. Although originally claimed by the IBEW, all parties agree that the remaining tasks should also be assigned to Laborers-represented employees

As the parties agreed on the record at the beginning of the hearing [Tr. 22:18-20:11, 21:8-22:17], that the Employer's assignment of the following work, originally claimed by the

IBEW, to Laborers-represented employees should be confirmed by the Board: installation of foundations, installation of manholes, horizontal directional drilling (HDD), concrete work (other than encasement of duct banks), asphalt work, digging, trenching, shoring, staging, lay out of materials, core drilling, saw cutting, anchoring devices, backfill, and pot holing. This agreement is bolstered by evidence of Employer preference and historic assignment practices, industry and area practice, efficiency, economy, employee skills, ability and safety [Tr. 48:23-50:11, 51:19-21, 55:11-18, 57:11-58:4, 59:24-60:8, 61:1-11, 62:11-63:21, 64:20-23, 103:21-106:18, 109:15-112:23, 118:2-18, 124:5-10, 126:6-127:24, 174:24-176:11, 186:15-187:22, 190:3-196:20, 194:18-195:6, 204:15-207:13, 224:21-226:9].

C. A BROAD ORDER IS APPROPRIATE HERE

Where a dispute is likely to recur, an order covering the geographic area in which the employer does business and the jurisdiction of the competing unions coincide is appropriate. Bridge, Structural & Reinforcing Iron Workers Local No. 1, 311 NLRB 87, 93 (1993). Here, the IBEW continues to claim the work and to claim that the assignment of this work to IBEW-

represented employees is required by its collective-bargaining agreement with the Employer [Tr. 12:18-20:11, 21:8-22:17]. The Employer's principal place of business is in Riverside County, and the geographic jurisdiction of both unions includes Riverside County, California [Tr. 23:5-24:14, 44:3-4]. Even more significantly, this dispute covers four discrete jobsites in Riverside County [Er. Ex.8]. In these circumstances, an award covering all of Riverside County, and not just the four jobsites at issue here, is appropriate.

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III. CONCLUSION

For the foregoing reasons, the Board should find that there is reasonable cause to believe there is a violation of Section 8(b)(4)(D) of the Act, that there is no sufficient evidence to preclude an award of the work under Section 10(k) of the Act and that the work in issue in the Notice of Hearing was properly assigned by the Employer to employees represented by the Laborers.

Dated: October 29, 2009

LAURENCE S. ZAKSON, A Member of
REICH, ADELL & CVITAN
A Professional Law Corporation

By: _____/s/_____
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party of the within action. My business address is 3550 Wilshire Boulevard, Suite 2000, Los Angeles, CA 90010.

On **October 29, 2009**, I served the foregoing document described as: **CHARGED PARTY UNION'S POST-HEARING BRIEF**, on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

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Executed on **October 29, 2009**, at Los Angeles, California.

[X] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court, at whose direction the service was made.

/s/
Virginia Alvarez