

**Glaziers District Council 16 and San Francisco Building Trades Council and MALV, Inc., d/b/a Service West and Carpenters 46 Northern California Counties Conference Board.** Cases 20–CD–750 and 20–CD–751

March 1, 2011

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE  
AND HAYES

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act. MALV, Inc. d/b/a Service West (the Employer) filed charges on July 26, 2010, alleging that the Respondents, Glaziers District Council 16 (the Glaziers), and San Francisco Building Trades Council (the Trades Council) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees represented by Glaziers rather than to employees represented by Carpenters 46 Northern California Counties Conference Board (the Carpenters). The hearing was held on September 3 and 7, 2010, before Hearing Officer Scott M. Smith. The Employer and the Trades Council filed posthearing briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a California corporation, is engaged in the business of installing modular furniture. The Employer's principal place of business is in San Leandro, California. During a 12-month period preceding the hearing, the Employer purchased and received goods and services valued in excess of \$50,000 directly from points outside the State of California. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Glaziers, the Trades Council, and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

*A. Background and Facts of Dispute*

The Employer operates within the construction industry in Sacramento, South San Francisco, San Leandro, and Anaheim, California. It specializes in the installation of demountable walls, which are office walls set on a track system which may be disassembled and moved from one location to another without doing any harm to the building.

The Employer is a member of a multiemployer bargaining group, the Modular Installers Association (Association). Since 1982, the Employer has been signatory to the Carpenters Master Agreement for Northern California and its Office Modular Systems Addendum. The current contract expires on June 30, 2012 (Carpenters Agreement). The Employer has approximately 150 Carpenters-represented employees. They have performed all of the Employer's demountable wall installations, 95 percent of which have used glass panel partitions.

During March 2010,<sup>1</sup> the Employer began installing glass partitioned demountable wall systems at 555 Mission Street in San Francisco for the Silicon Valley Bank (555 Mission project). The Employer was the subcontractor of MG West, the project's furniture subcontractor. The Employer assigned the installation work to employees represented by the Carpenters. Sometime in late March, MG West Project Manager Troy Good received a telephone call from Glaziers' business manager, Doug Christopher, and Glaziers' representative, Mark Shelley. Both men claimed that the work the Employer had assigned to employees represented by the Carpenters should be performed by employees represented by the Glaziers. Good suggested that the two men settle the issue with the Carpenters, but Christopher said that the Glaziers planned to take unspecified actions against Silicon Valley Bank. Adam Chelini, project executive for Skyline Construction, the general contractor for the 555 Mission project, testified that he received a telephone call from an unidentified Glaziers' agent who demanded that the work at issue be performed by employees represented by the Glaziers.

On April 1, the Glaziers began demonstrating at the 555 Mission project. The demonstrators patrolled while carrying two large banners with the slogan: "Shame on you Silicon Valley Bank." They shouted the same words with the additional statement: "You are taking food off of our tables," and they distributed flyers with the same message and another additional statement: "This is a public service message brought to you by District Council 16 [Glaziers]. We are not asking any individual to cease performing service, or to refuse to pick up or deliver." Because of the demonstrations, the Employer stopped performing the work during the day and began doing the work at night for the duration of the project. The Employer also filed unfair labor practice charges against the Glaziers alleging that it was engaging in unlawful jurisdictional picketing and secondary activity at the 555 Mission project. The demonstrations continued on April 2, 5, and 19.

<sup>1</sup> All dates are in 2010, unless otherwise indicated.

On April 8, the Employer received a letter from the Glaziers accusing it of not meeting area standards in the payment of wages and benefits for the disputed work. On April 12, the Employer denied this. On April 13, the Glaziers sought and obtained sanction for area standards picketing against the Employer from the Trades Council, over the objections of the Carpenters.<sup>2</sup>

In June, Glaziers Director of Organizing John Sherak met with Carpenters Director of Organizing Jay Bradshaw to discuss the dispute. At that meeting, Sherak again asserted that the work in dispute should be performed by the Glaziers.

On or about July 20, the Employer began installing glass partitioned demountable wall systems at 101 California Street in San Francisco (101 California project). The Employer again assigned the work to employees represented by the Carpenters. The wages and benefits package received by these employees exceeded that provided to employees represented by the Glaziers. On July 21, the Glaziers began picketing at the 101 California project. About 20 to 30 picketers carried signs that stated that the Employer was “unfair” to the Glaziers because it did “NOT MEET AREA WAGES AND BENEFITS.” The signs also stated that this was not an effort to organize workers and that the picketing was sanctioned by the Trades Council. In order to avoid the picketing, the Employer again stopped performing the work during the day and performed it at night until the project was completed in late July or early August. The Employer also filed the charges in this 10(k) proceeding against both the Glaziers and the Trades Council.

Subsequently, at the Employer’s Graylock project in Menlo Park (Graylock project), an unidentified Glaziers’ agent visited the jobsite and demanded that employees represented by the Glaziers perform the installation there of glass partitioned demountable wall systems. Again, the Employer had employees represented by the Carpenters cease performing the work during the day and commence performing it at night for the duration of the project. In September, the Glaziers again accused the Employer of failing to meet area standards but the Employer demonstrated that its \$61.40 wages and benefits package was in excess of the Glaziers’ \$61.35 wages and benefits package.

<sup>2</sup> Adrian Simi, a Carpenters’ field representative, testified that at the April 13 meeting, the Glaziers asserted, in support of its requested sanction for area standards picketing, that the work “should be Glaziers work.” The Carpenters’ representatives at the meeting informed the Trades Council “[t]hat the Carpenters were in fact making more than the Glaziers doing the same work,” and that “the Carpenters had been doing this type of work for 30 years and it’s always been our work. It’s never been the work of Glaziers . . . what they’re trying to do is raid our work.”

### *B. Work in Dispute*

The work in dispute is the installation of demountable floor-to-ceiling wall systems with glass partitions.

### *C. Contentions of the Parties*

The Employer contends that there are competing claims for the work in dispute, that there is reasonable cause to believe that the Glaziers and the Trades Council violated Section 8(b)(4)(D), and that there is no agreed-upon voluntary method to adjust the dispute. On the merits of the dispute, the Employer contends that the factors of collective-bargaining agreements, employer preference, past practice, area and industry practice, relative skills and training, and economy and efficiency of operations favor awarding the disputed work to employees represented by the Carpenters. The Employer seeks a broad jurisdictional award applicable to the Employer’s current and future projects in the San Francisco Bay area.

The Glaziers did not appear at the hearing and has not filed a position statement. However, the Trades Council contends that the Board should quash the notice of hearing as to it on the ground that its sanction of area standards picketing by the Glaziers is “too slender a reed” upon which to subject it to this 10(k) proceeding. The Trades Council submits that it did not act as the Glaziers’ agent, that it was only aware of the Glaziers’ intention to engage in area standards picketing, that it did not participate in the Glaziers’ picketing in any way, and that therefore the notice of the 10(k) hearing should be quashed at least as to the Trades Council.

### *D. Applicability of the Statute*

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the Act, there must be reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work between rival groups of employees and that a party has used proscribed means to enforce its claim to the work in dispute.<sup>3</sup> Additionally, the Board will not proceed under Section 10(k) if there is an agreed-upon method for voluntary adjustment of the dispute.<sup>4</sup> For the reasons stated below, we find that this dispute is properly before the Board for determination under Section 10(k).

Glaziers’ business manager, Christopher, Representative Shelley, and Director of Organizing Sherak all claimed at various times that the work in dispute should be performed by employees represented by the Glaziers.

<sup>3</sup> *Carpenters Local 624 (T. Equipment Corp.)*, 322 NLRB 428, 429 (1996).

<sup>4</sup> See, e.g., *Electrical Workers Local 3 (Slattery Skanska, Inc.)*, 342 NLRB 173, 174 (2004).

These claims, together with the Employer's assignment of the work in dispute to employees represented by the Carpenters, are sufficient to establish reasonable cause that there are competing claims to the disputed work.<sup>5</sup>

We further find reasonable cause to believe that the Glaziers has used proscribed means to enforce its claim for the disputed work by picketing at the 101 California project. This is so even though the Glaziers' picket signs protested the Employer's alleged failure to pay area standards wages and benefits for employees performing the work in dispute, and picketing to enforce area standards is permissible under Section 8(b)(4)(D).<sup>6</sup> However, even where one object of picketing is to protect area standards, if the evidence shows reasonable cause to believe that another object of the picketing is to obtain the disputed work, that is sufficient to bring the union's conduct within the ambit of Section 8(b)(4)(D).<sup>7</sup>

While the Glaziers sought and obtained the Trades Council's sanction for area standards picketing at an April 13 meeting, according to testimony by Carpenters Representative Simi, the Glaziers asserted at that meeting that the work "should be Glaziers work."<sup>8</sup> The Glaziers repeated its claim to the work in dispute in a meeting with the Carpenters on June 9, only a few weeks before the picketing commenced. Given the Glaziers' repeated claims to the work in dispute, we find reasonable cause to believe that an object of this picketing was to force or require the Employer to reassign the disputed work to employees represented by the Glaziers.<sup>9</sup>

By contrast, we find that there is not reasonable cause to believe that the Trades Council has violated Section 8(b)(4)(D). Its involvement was limited to approving the Glaziers' request to engage in area standards picketing, which was lawful. At that time, it appears that the Trades Council knew only that there were competing claims to the work by the Glaziers and the Carpenters, and that there were conflicting claims over whether the Employer was complying with area standards. This provides no basis on which to find reasonable cause to be-

lieve that the Trades Council knew that an object of the picketing would be to obtain the disputed work or that the Employer in fact was complying with area standards. Further, although the Glaziers' picket signs stated that the picketing was sanctioned by the Trades Council, there is no evidence that any agents of the Trades Council directly participated in the Glaziers' picketing. Compare *Laborers Local 89 (San Diego Zoological Society)*, 198 NLRB 129, 130 (1972) (no allegation that council was liable where it sanctioned picketing) with *Boilermakers Local 6 (Pacific Far East Lines)*, 224 NLRB 222, 223 fn. 2 (1976) (council liable where it both sanctioned and participated in picketing); *Carpenters Local 1102 (Don Cartage Co.)*, 160 NLRB 1061, 1069 (1966) (same). Last, the Trades Council did not represent employees doing the disputed work and itself made no claim to the disputed work. Nor is there any evidence that would suggest that the Trades Council joined the Glaziers in its claim to the disputed work. In those circumstances, we grant the Trades Council's request to quash the notice of hearing with regard to it.<sup>10</sup>

We also find that no agreed-on method exists for voluntarily resolving the dispute. It is well settled that all parties to the dispute must be bound if an agreement is to constitute "an agreed method of voluntary adjustment." *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1140 (2005). In order to determine if the parties are bound, the Board carefully scrutinizes the agreements at issue. See, e.g., *Elevator Constructors Local 2 (Kone, Inc.)*, 349 NLRB 1207, 1209-1210 (2007); *Sheet Metal Workers Local 292 (Gallagher-Kaiser Corp.)*, 264 NLRB 424, 428-430 (1982). The Carpenters Agreement requires that jurisdictional disputes "be settled by the Unions themselves, or submitted to the International Presidents of the Unions involved in the dispute, for determination." The current Northern California Glaziers Master Agreement between the Glaziers and the Northern California Glass Management Association (Glaziers Agreement) has no specific provision covering jurisdictional disputes. Accordingly, the Carpenters and the Glaziers are not bound to a common provision for the resolution of jurisdictional disputes.

Based on these facts, we find reasonable cause to believe that there are competing claims to the disputed work, that Section 8(b)(4)(D) has been violated by the Glaziers, and that there is no agreed-upon voluntary method to adjust the dispute. Accordingly, we find that Section 10(k) is applicable, and that the dispute is properly before the Board for determination.

<sup>5</sup> *Electrical Workers Local 134 (Pepper Construction Co.)*, 339 NLRB 123, 125 (2003).

<sup>6</sup> *Sheet Metal Workers Local 19 (E. P. Donnelly, Inc.)*, 345 NLRB 960, 962 (2005).

<sup>7</sup> *Id.*

<sup>8</sup> Also at that meeting, the Carpenters stated that its wages and benefits exceeded those paid to the Glaziers.

<sup>9</sup> *Electrical Workers Local 134 (Pepper Construction Co.)*, supra, 339 NLRB at 125 (an object of purported area standards picketing was assignment of work where union asserted claims to work prior to picketing, which occurred even after assurances employer would meet area standards); *Sheet Metal Workers Local 19 (E. P. Donnelly, Inc.)*, supra, 345 NLRB at 962 (statements by picketing union to competing union and to employees claiming work established unlawful jurisdictional objective despite disclaimer and use of area standards message).

<sup>10</sup> Member Hayes would find that the evidence is sufficient to establish reasonable cause to believe that the Trades Council violated Sec. 8(b)(4)(D).

### *E. Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577 (1961). 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).

The following factors are relevant in making the determination of this dispute.

#### 1. Collective-bargaining agreements

The Employer has been signatory to the Carpenters Agreement since 1982. The Employer has not been signatory to the Glaziers Agreement during that time. The Carpenters Agreement specifically covers “handling, installation, removal, relocation and maintenance of all new or used free standing manufactured modular office furniture systems . . . raised flooring systems, demountable floor to ceiling wall systems/partitions.” Therefore, the factor of collective-bargaining agreements favors an award to employees represented by the Carpenters. See *Electrical Workers Local 103 (Lucent Technologies)*, 333 NLRB 828, 830 (2001).<sup>11</sup>

#### 2. Employer preference, current assignment, and past practice

The Employer prefers that the work in dispute continue to be assigned to employees represented by the Carpenters in accord with a consistent past practice dating back to 1982. There is no evidence that the Employer has previously assigned the work in dispute to employees represented by the Glaziers. We find that the factors of employer preference, current assignment, and past practice favor awarding the disputed work to employees represented by the Carpenters. See *Sheet Metal Workers Local 19 (E. P. Donnelly, Inc.)*, 345 NLRB 960, 963 (2005).

#### 3. Area practice

Mark Vignoles, the Employer’s president, testified that 100 percent of the union contractors in the San Francisco Bay area were signatory to the Carpenters Agreement. Good testified that in his 13 years in the business, the disputed work had always been performed by employees

represented by the Carpenters. Michael Vlaming, the Association’s executive director, testified that all the members of the Association used employees represented by the Carpenters to perform the disputed work. He was unaware of any employer who used employees represented by the Glaziers to perform the disputed work.

There is no evidence that any employer in the San Francisco Bay area has assigned work similar to that in dispute to employees represented by the Glaziers. Accordingly, we find that the factor of area practice favors an award of the disputed work to employees represented by the Carpenters. See *Elevator Constructors Local 2 (Kone, Inc.)*, supra, 349 NLRB at 1210.

#### 4. Relative skills and training

Vignoles testified that employees attend training with the manufacturers of the demountable floor to ceiling wall systems with glass partitions and thereby gain factory certification for their work. The trained employees then teach the other employees how to handle the specific products. Vignoles also noted that the employees represented by the Carpenters are excellent at layout by virtue of being carpenters. This is the paramount skill required for the disputed work. The glass is preassembled and requires no cutting and seaming. Good testified that employees represented by the Carpenters have superior training and skills to handle the “mitered corners . . . detailed measurements, cuts, quite a bit of aluminum and wood work.” Vlaming testified that the continual practice with installing the disputed work enhanced the skill set of the employees represented by the Carpenters. He stated that “it takes a special skill and particular training to install the floor-to-ceiling product . . . you work with your more experienced installers. They sort of work their way up, the skill set . . . and sophistication in installing systems. . . . So, it takes different skills and it takes . . . a crew of employees to do this work. That’s all they do.” There is no evidence concerning the skills and training of employees represented by the Glaziers. Accordingly, we find that this factor favors an assignment of the work to employees represented by the Carpenters. See *Machinists District Lodge 160 (SSA Marine)*, 347 NLRB 549, 552 (2006).

#### 5. Economy and efficiency of operations

Vignoles testified that it would slow the disputed work considerably “to bring in somebody just to do a piece of glass.” He testified that his team of employees represented by the Carpenters worked efficiently because they would “have worked together quite a long time . . . they can work sequentially . . . if you have to bring in a subcontractor . . . you’re waiting for him to finish his part . . . . It’s very inefficient. . . . Because we’d have to build

<sup>11</sup> The Employer entered into the Carpenters Agreement under the provisions of Sec. 8(f) of the Act that permit parties in the construction industry to establish bargaining relationships without a showing of majority employee support for the union. Since approximately 1992, the Employer has recognized the Carpenters as a majority representative under Sec. 9(a). The change in the Carpenters’ representative status has no effect on our determination of the merits of the dispute.

the frame, then schedule in somebody else to put the glass in. We'd send our frame crew someplace else, and then they'd put the glass in, then we'd bring the frame crew back to trim out the job . . . we would lose a day, two days." Good testified that superintendents from two of the general contractors with whom MG West frequently worked told him that it was essential the employees represented by the Carpenters rather than employees represented by the Glaziers perform the disputed work. This was so because employees represented by the Glaziers "were less adept at building the system than the Carpenters would be . . . the Glaziers moved extremely slow." Vlaming testified that subcontracting to a separate group is never efficient, but rather "if all of your employees have been trained in this, and all of your employees are members of one union, it's much more efficient to have them do all of the work . . . de-mountable floor-to-ceiling partition installation work . . . isn't on every project. And that work isn't the entirety of every job. And so to the extent that you can use them to do that work, and then if you're still performing some open space cubicle work, you can roll them right over to that other work, that's very efficient and that's the way you'd want to run your business."

Based on the uncontroverted testimony presented by the Employer's witnesses, we find that the factor of economy and efficiency of operations favors awarding the disputed work to employees represented by the Carpenters. See *Carpenters Local 62 (Homebase, Inc.)*, 311 NLRB 984, 986 (1993).

#### Conclusion

After considering all the relevant factors, we conclude that employees represented by the Carpenters are entitled to continue performing the work in dispute. We reach this conclusion relying on the factors of the Carpenters Agreement, employer preference, current assignment and past practice, area practice, relative skills and training, and economy and efficiency of operations. In making this determination, we award the work to employees represented by the Carpenters, not to that labor organization or to its members.

#### Scope of Award

The Employer has requested that our award encompass not just the 101 California project, where the work has already concluded, but all the Employer's future projects in the San Francisco Bay Area. "Normally, 10(k) awards are limited to the jobsites where the unlawful 8(b)(4)(D) conduct occurred or was threatened." *Carpenters (Prate Installations, Inc.)*, 341 NLRB 543, 546 (2004). For the

Board to issue a broad award, two prerequisites must be met—there must be: "(1) evidence that the disputed work has been a continuous source of controversy in the relevant geographic area and that similar disputes may recur; and (2) evidence demonstrating the offending union's proclivity to engage in further unlawful conduct in order to obtain work similar to that in dispute." *Id.* When evaluating these prerequisites, the Board looks to the offending union's other conduct. See *Electrical Workers Local 98 (Lucent Technology)*, 338 NLRB 1118, 1122 (2003); *Electrical Workers Local 98 (Swartley Bros. Engineers)*, 337 NLRB 1270, 1273 (2002).

The Employer relies on conduct by the Glaziers at the 555 Mission project and at the Greylock project in support of its contention that a broad order is warranted here. However, even assuming that this evidence is sufficient to show that the disputed work has been a continuing source of controversy and is likely to recur, there is no previous 10(k) determination by the Board involving an attempt by the Glaziers to force the assignment of this work to employees it represents. Thus, there is no evidence that the Glaziers have a proclivity to use proscribed means to obtain work similar to the work in dispute.<sup>12</sup> Accordingly, we conclude that a broad award is inappropriate and our determination is limited to the controversy that gave rise to this dispute.

#### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of MALV, Inc., d/b/a Service West represented by Carpenters 46 Northern California Counties Conference Board are entitled to perform the installation of demountable floor-to-ceiling wall systems with glass partitions on the Employer's 101 California jobsite in San Francisco, California.

2. Glaziers District Council 16 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force MALV, Inc., d/b/a Service West to assign the work to employees represented by them.

3. Within 14 days from this date, Glaziers District Council 16 shall notify the Regional Director for Region 20 in writing whether it will refrain from forcing MALV, Inc., d/b/a Service West, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

<sup>12</sup> See, e.g., *Electrical Workers Local 3 (Slattery Slanska)*, supra, 342 NLRB at 177.