

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM 73-82

December 3, 1973

TO: All Regional Directors, Officers-In-Charge,  
and Resident Officers

FROM: Peter G. Nash  
General Counsel

SUBJECT: Authorization of Regional Directors to Process  
Without Clearance Section 8(b)(4)(D) Cases  
and Related Section 10(1) Petitions --  
Guide for Processing.

Experience has made it clear that Regional disposition of Section 8(b)(4)(D) cases and related Section 10(1) issues without prior Washington clearance would be fully consistent with effective, as well as expeditious, case processing. Regional Directors are, accordingly, authorized to process and dispose of 8(b)(4)(D) charges and to seek Section 10(1) injunctions in appropriate 8(b)(4)(D) cases, without prior Washington clearance. As with all unfair labor practice cases, the Regional Director should submit to the Division of Advice issues which he finds novel, not clearly governed by controlling precedents, or otherwise deemed appropriate for submission. 1/

To provide assistance and guidance to Regions in processing such cases, the following material has been prepared. No attempt has been made to cover all aspects of the subject area; emphasis is placed on those issues which have in the past presented particular difficulty. Further, provisions in the Manual which may require amendment have not, as yet, been formally amended, but should be now considered amended in conformity with this document where conflicts or inconsistencies exist between this document and the Manual. Questions and issues which would warrant submission for advice are underscored for ready identification and are listed at pages 21-22 of the memorandum.

During the three months after the date of this authorization, the Regions should consider what, if any, modifications in the guide memorandum are needed or desirable. All suggestions for modification should be submitted by the end of the three-month period. A final guide memorandum containing any needed modifications will then be issued and made public, and necessary Manual changes will be made.

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1/ Such advice, whether on substantive or procedural questions, may be sought telephonically, as has long been the policy for expeditious handling of priority cases.

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## I. SECTION 8(b)(4)(D) ISSUES

### A. Elements of a "Work Assignment" Dispute

The object proscribed under Section 8(b)(4)(D) 2/ is, as stated by the Supreme Court in the CBS case, 3/ "to compel an employer to assign particular work" to one of "two or more employee groups claiming the right to perform certain work tasks." Following CBS, the Board elaborated upon that definition, asserting, "Sections 8(b)(4)(D) and 10(k) were designed to resolve competing claims between rival groups of employees, and not to arbitrate disputes between a union and an employer where no such competing claims are involved." 4/ Earlier, in Mountain States Telephone and Telegraph Company, 5/ the Board stated:

It does not matter that the "dispute" is not between two unions; for one union to require the Employer to assign work to its members rather than to employees who are not members of any union is proscribed. Likewise, requiring the assignment of work to members of a particular class, broadly defined to include any cognizable "group" is a proscribed objective.

However, the language of 8(b)(4)(D) itself, and its legislative history, emphasize that there must be a choice between the two groups, whatever factors may differentiate the two. The required assignment must not be to employees in the one group, it must

- 2/ Inasmuch as Section 8(b)(4)(i) and (ii) set forth proscribed means applicable to all subsections of 8(b)(4), the means proscribed by Section 8(b)(4)(D) are not discussed herein. As with unfair labor practice issues generally, the Regional Director should submit to the Division of Advice "proscribed means" issues in Section 8(b)(4)(D) cases where he finds such issues to be novel, not clearly governed by controlling precedents, or otherwise appropriate for submission.
- 3/ N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, I.B.E.W. [Columbia Broadcasting System; hereinafter "CBS"], 374 U.S. 573, 576, 586 (1961). For cases holding that the controversy must be over the assignment of particular work, see Cuneo Eastern Press, Inc. of Pennsylvania, 168 NLRB 531, 532 (1967); Bell Telephone Company of Pennsylvania, 144 NLRB 1351, 1357 (1963); Anheuser-Busch, Inc., 101 NLRB 346 (1952).
- 4/ Safeway Stores, Inc., 134 NLRB 1320, 1322 (1961). In referring to the so-called "Safeway rule," the Supreme Court has held that "the applicability of §8(b)(4)(D) is premised on conflicting claims of unions or groups of employees for the same job." N.L.R.B. v. Plasterers' Local No. 79 [Texas State Tile], 404 U.S. 116, 135 (1971). See also Rocky Mountain Bank Note Company, 145 NLRB 921, 924 (1964) and cases cited at fn. 3 therein.
- 5/ 118 NLRB 1104 (1957).

be in derogation of, or rather than, assignment to members of the other group. There must, in short, be either an attempt to take a work assignment away from another group, or to obtain the assignment rather than have it given to the other group. 6/

#### 1. Relevant Factors in Determining Character of Dispute

Determining whether a dispute is a work assignment dispute can be difficult; all relevant facts must be considered. For example, demands for a contract containing union-security clauses, may bear significantly on whether a union is seeking a work assignment for its members. Thus, in Howard Price 7/ and Lang Bros., 8/ the Board considered such a request as a factor, among others, in assessing whether the dispute was jurisdictional. In those cases a union-security clause was seen as furnishing a mechanism for replacing employees who might be unwilling to become members of the respondents, thereby accomplishing the union's objectives of having jobs reassigned to their members. Moreover, since Section 8(b)(4)(D) "is not limited to competing groups of employees working for the same employer," 9/ where a union attempted to enforce a contractual provision to force changes in subcontracting arrangements between employers, thereby causing the assignment of the disputed work, an 8(b)(4)(D) object was found. 10/ Also, claims for work assignments involving insistence that the work assignment be incorporated in a collective-bargaining agreement may arise during contract negotiations. When a Regional Director finds such issues are present in a Section 8(b)(4)(D) case, the case should be submitted for advice.

#### 2. Distinctions from Representational, Recognitional Disputes

The differences between work assignment disputes and recognitional or representational disputes must be kept in mind. For instance, in Mountain States Telephone and Telegraph, 11/ no work assignment dispute

6/ Id. at 1107. A work assignment dispute can exist between competing trades within the same local or between locals of the same International. See, e.g., Shelby Marble & Tile Co., 188 NLRB 148 (1971), 191 NLRB No. 47 (1971), 195 NLRB 123 (1972), enf'd, 475 F. 2d 1316 (C.A.D.C., 1973); Decora, Inc., 152 NLRB 278 (1965). The disputed work, of course, must be performed by statutory employees. See Maxon Construction Co., 194 NLRB 594 (1971).

7/ Howard Price, 119 NLRB 1384, 1388 (1958).

8/ James R. Lang and Lloyd L. Lang, d/b/a Lang Bros., 125 NLRB 753, 757-758 (1959).

9/ Western Electric Co., Inc., 141 NLRB 888, 894 (1963).

10/ Arthur Venneri Company, 145 NLRB 1580, 1589 (1964); see also Western Electric Co., Inc., supra note 9, at 894 n. 6.

11/ Supra note 5, at 1107. See also Electrical Constructors, 183 NLRB No. 91, sl. op., pp. 7-8 (1970); Apex Contracting, Inc., 206 NLRB No. 92 (1973), cases cited at 5, n. 3.

was found to exist where "the Union merely wanted the Company to recognize it as continuing to represent whatever employees were assigned to the work" and was not seeking "to require the Company to take work from anyone, or to assign it to one group of employees as against another." Similarly, in Safeway Stores, supra, no work assignment dispute was held to exist where the employer reassigned work performed by employees represented by Teamsters Local 107 to other plants whose employees were represented by sister Teamster locals and discharged the employees comprising the entire bargaining unit whose duties were reassigned. The Board stated:

The real dispute is wholly between Local 107 and Safeway and concerns only Local 107's attempt to retrieve the jobs of its members, jobs which had been secured for more than 10 years by a series of collective-bargaining agreements until Safeway suddenly terminated the bargaining relationship on December 31, 1959. The strike here was in protest against Safeway's action and also a concerted effort to preserve Local 107's historical bargaining status. 12/

### 3. Disputes Over "Lost" Jobs

A substantial line of cases arising out of Section 8(b)(4)(D) charges has involved "reinstatement" to "lost" jobs. The Board has declined to find a work assignment dispute when the union is demanding no more than reinstatement of discharged employees or protesting an employer's change in working conditions which results in termination of employee-members. Thus, in Franklin Broadcasting Company, 13/ the union's protests against the employer's discharge of employees and refusal to sign a new contract did not constitute a work assignment claim. And in Bulletin Company, 14/ the Board found no work assignment object in a union's picketing over the loss of employment by members formerly employed by an independent contractor whose services the picketed company had ceased using.

In Waterway Terminals Company 15/ the Board held no work assignment dispute existed where Waterway decided to undertake an operation with its own employees rather than through a subcontractor, Interstate, and the union representing Interstate's employees under a collective-bargaining agreement picketed to demand continued employment for those employees and continued application of the agreement. Likening the case to

12/ 134 NLRB at 1323 (emphasis supplied). See also Seattle Olympic Hotel Co., 204 NLRB No. 147 (1973); Gordon Broadcasting of San Diego, Inc., 127 NLRB 1070 (1960); Waterway Terminals Co., 185 NLRB 186 (1970), 193 NLRB 477 (1971); 37 NLRB Ann. Rep. 127-128 (1972), where the Board dismissed an 8(b)(4)(D) complaint, but found an 8(b)(7)(A) violation.

13/ 126 NLRB 1212 (1960).

14/ 139 NLRB 1391 (1962). Compare, Union Carbide Chemical Co., 137 NLRB 750 (1962), distinguished by the majority in Bulletin. Id. at 1396 n. 2.

15/ 185 NLRB 186 (1970), rev'd. & rem'd., 467 F. 2d 1011, 81 LRRM 2449 (C.A. 9, 1972), 203 NLRB No. 126 (1973). See 36 NLRB Ann. Rep. 85 (1971).

Franklin Broadcasting and Safeway Stores, supra, the Board characterized the dispute as a union's "attempt to retrieve the jobs of employees whom the employer chose to supplant by reallocating their work to others." 16/

Waterway Terminals has been followed in Triangle Maintenance Corp., 186 NLRB 538 (1970), and Shell Chemical Co., 199 NLRB No. 95 (1972), but was distinguished in Prudential-Grace Lines, Inc., 194 NLRB 1219 (1972); Midwest Engineering Service, Inc., 199 NLRB No. 87 (1972); and F & B/Ceco of California, Inc., 199 NLRB No. 128 (1972). And the Board was reversed in Waterway, where the Court of Appeals, in a 2-1 decision, found:

[T]here were two discrete groups each insisting upon its sole right to perform the carloading duties: the IBU on behalf of its members who had a collective bargaining agreement with Waterway, and were then performing the work; and ILWU which insisted it had the right to have the work assigned to its members who had previously performed it as employees of Interstate. While the situation contains elements of representation, it does not exemplify the classic representation dispute where each of two vying unions insists that it represents the majority of the employees of a given employer. 17/

The state of the law in the Waterway Terminals area is sufficiently unclear, so that when a Regional Director finds that a case involves a substantial question as to the existence of a work assignment dispute, the case should be submitted for advice.

#### B. Disclaimer Problems

As noted above, there must be rival claims to disputed work to bring a case within the ambit of Section 8(b)(4)(D). 18/ Thus, when a union

16/ 185 NLRB at 188, quoting from Safeway, supra note 4, at 1322.

17/ 467 F. 2d 1011, 1018 (C.A. 9, 1972).

18/ See Safeway Stores, supra note 4, at 1322-23; Seattle Olympic Hotel Co., supra note 12, at 6; Cf. Michigan State Distribution Contractors Association, Inc., 152 NLRB 740 (1965). In N.L.R.B. v. Plasterers' Local 79, supra note 4, at 134, the Supreme Court stated:

As we understand the Safeway doctrine, however, when one union disclaims the work, 10(k) proceedings terminate, not because all "parties" to the dispute have settled or agreed to settle within the meaning of the statute, but on the ground that, in the words of the Board's brief in this case, "the Board has power, under Section 10(k) only to hear and determine the merits of a jurisdictional dispute and ... by definition, such a dispute cannot exist unless there are rival claims to the work ...."

Discussed below are problems arising under all-party methods of adjustment where 10(k) proceedings would be precluded because of such an agreement.

has made no claim to the disputed work or when the employer is satisfied by the union's renunciation of a prior claim, there is no work assignment dispute cognizable under 8(b)(4)(D). 19/ However, when it is contended that the renunciation is not sufficient, the purported "disclaimer" must be evaluated in light of the particular circumstances. 20/

The mere assertion of a "disclaimer", particularly after a 10(k) notice has issued or at the 10(k) hearing itself, will not be effective to preclude finding a work assignment dispute. 21/ The disclaiming union or its members must generally take more affirmative action in renouncing the prior claim to make the disclaimer effective. A "disclaimer" by a union whose members are assigned the work has been held ineffective when those employees do not acquiesce in the disclaimer 22/ and particularly where the employees continue performing the assigned work "without restraint, discipline, or threats thereof" from their bargaining representative. 23/ The employees' refusal or inability to accept a reduction in wages, which are derived in part from the "disclaimed" work, has precluded a finding that the disclaimer was "effective to extinguish the jurisdictional dispute." 24/

An agreement by the union merely to refrain from further Section 8(b)(4)(D) conduct is not an effective disclaimer. And, a "disclaimer" limited to a particular construction jobsite has been held insufficient, 25/

19/ See Thorpe Insulation Company, 198 NLRB No. 184 (1972); Southwestern Floor Co., 143 NLRB 251, 255 (1963); Acoustics & Specialties, Inc., 139 NLRB 598, 600 (1962). As the Supreme Court asserted in N.L.R.B. v. Plasterers, supra note 4, at 135, the function of a Section 10(k) hearing "evaporates when one of the unions renounces and refuses the work" (emphasis supplied).

20/ Cf. Bigge Drayage Company, 198 NLRB No. 130, TXD pp. 13-14 (1972); Blaine Petty Company, 186 NLRB 365, 367 (1970); "Quarterly Report on Case Developments," R-1215, 23-24 (Jan. 13, 1972), reprinted in BNA 1971 Lab. Rel. Yearbook 232, 242-243.

21/ Cf. Campbell Construction Co., Inc., 194 NLRB 367, 368 (1971); Interstate Drywall, Inc., 191 NLRB No. 93 (1971).

22/ See Builders Ass'n. of Eastern Ohio and Western Pennsylvania, 203 NLRB No. 23, sl. op., p. 5 (1973); Geo. E. Hoffman & Sons, Inc., 195 NLRB 93, 94 (1972); High Point Sprinkler Company of Atlanta, 191 NLRB No. 52, sl. op., p. 10 (1971); Biebel Bros., Inc., 170 NLRB 285, 286 (1968); Decora, Inc., supra, 152 NLRB at 282. Cf. N.L.R.B. v. Plasterers, supra note 4, at 134. Likewise, the performance of the disputed work, in the face of resistance from the rival union, by the employees to whom it is assigned is considered to constitute "an unequivocal claim to it." Layne-Western Company, 155 NLRB 695, 698 (1965). See also Vibroflotation Foundation Co., 203 NLRB No. 64, TXD p. 6 (1973).

23/ Eazor Express, Inc., 203 NLRB No. 154, sl. op., p. 9 (1973).

24/ See Pocahontas Steamship Company, 152 NLRB 676, 679-680 (1965) enf'd., sub nom., N.L.R.B. v. Local 1291, I.L.A., 368 F. 2d 107, 63 LRRM 2324 (C.A. 3, 1966).

25/ Cf. Kahoe Air Balance Co., 197 NLRB No. 17, sl. op., pp. 6-7 (1972); cases cited at note 21 supra.

where the union has previously engaged in similar conduct against the same employer for the same type of work at previous jobsites and again "disclaims" interest in seeking a work assignment at the jobsite involved in the case. That limited disclaimer may be considered insufficient, since the circumstances essentially reflect a continuing work assignment dispute on various sites. Indeed, in such circumstances the Board's work assignment determination might not be limited to a particular jobsite. 26/ However, a disclaimer extending beyond the jurisdiction of the disputing local unions would not be sought in such circumstances. 27/ While other locals of the same International may have engaged in similar disputes with the same employer, the Board is not likely to make an award extending to local unions not parties to the case, inasmuch as factors bearing on an award, e.g., applicable area practices, may differ. 28/

Cases found by the Regional Director to involve substantial questions as to the sufficiency of a purported disclaimer should be submitted for advice.

C. Section 10(k) Proceedings; Compliance with the Board's Determinations

If there is reasonable cause 29/ to believe that the respondent union is violating Section 8(b)(4)(D), Section 10(k) proceedings are warranted unless all parties have agreed to be bound by a voluntary method for adjusting the work assignment dispute or have actually adjusted the

26/ See, e.g., Vibroflotation Foundation Company, 199 NLRB No. 53, sl. op., p. 10 (1972); Kimstock Div., Tridair, 198 NLRB No. 182, sl. op., p. 13 (1972); Grinnell Co. of Oregon, 182 NLRB 77, 80 (1970); Associated Underground Contractors, Inc., 180 NLRB 456, 458-59 (1969); Western Electric Co., supra note 9, at 897 n. 12; Frank P. Badolato & Son, 135 NLRB 1392, 1401 (1962); Refrigeration Equipment Co., 112 NLRB 608, 617-18 (1955). Cf. Western Electric Company, 144 NLRB 1318 n. 1 (1963), enf'd., 339 F. 2d 145, 58 IRRM 2003 (C.A. 2, 1964).

27/ Cf. Bigge Drayage, supra note 20; Geo. E. Hoffman, supra note 22.

28/ See Franki Foundation Co., 197 NLRB No. 64, amending 195 NLRB 511 (1972); Western Electric, supra note 9, at 895-97.

29/ "In a Section 10(k) proceeding, the Board need only find that there is reasonable cause to believe that an 8(b)(4)(D) violation has occurred; in an 8(b)(4)(D) [complaint] proceeding, findings are based on a preponderance of the evidence." Worcester Telegram Publishing Co., Inc., 125 NLRB 759, 761 n. 5 (1959) (Board's emphasis). See also N.L.R.B. v. Plasterers, supra note 4, at 122 n. 10; CBS, supra note 3, 364 U.S. 573; Rules and Regulations, Section 102.90; Statements of Procedure, Sections 101.33-101.34; Board's brief in Shell Chemical Co. v. N.L.R.B., on petitions for review of 199 NLRB No. 95, supra, and 199 NLRB No. 70 (C.A. 5, Nos. 73-1399 and 73-1401), pp. 6-14. Moreover, matters litigated in the 10(k) proceeding may not be relitigated in a subsequent 8(b)(4)(D) complaint trial. F & B/Ceco of California, 205 NLRB No. 107, JD at 5 (1973).

dispute. 30/ The Act further requires that the 8(b)(4)(D) charges be dismissed "[u]pon compliance by the parties to the dispute with the decision of the Board" in the 10(k) proceeding. 31/ While Section 10(k) and the rules and regulations refer to the "parties", compliance by the respondent union is the critical element. Thus, the Region would proceed to complaint against the respondent union if it engages in 8(b)(4)(D) conduct after a Board determination that it is not entitled to the disputed work. 32/ On the other hand, where the Board in a 10(k) determination has awarded the disputed work to a union, the union is privileged under the proviso to Section 8(b)(4)(D) to seek to compel the employer to comply with the Board's award. 33/

D. Agreed-Upon Methods of Adjustment; "Actual Adjustments"

Section 10(k) proceedings are precluded if all the parties to the work assignment dispute are bound by an agreed-upon method for adjusting the dispute 34/ or if the parties have adjusted the dispute through voluntary procedures. 35/ The issues of what constitute agreed-upon methods and adjustments that will preclude 10(k) proceedings are discussed below.

30/ See N.L.R.B. v. Plasterers' Local No. 79, supra; Eazor Express, supra note 23, at 9 and cases cited at fn. 11 therein; N.L.R.B. v. Local 825, Operating Engineers [Burns and Roe], 410 F. 2d 5, 8-9 (C.A. 3, 1969); Rules and Regulations, Section 102.90; Statements of Procedure, Sections 101.33-34.

31/ See also Rules and Regulations, Section 102.93; Statements of Procedure, Section 101.36.

32/ Generally, the mere statement of the union's intention not to comply is sufficient basis for issuance of a complaint. However, as discussed below, where there has been an award under an agreed-upon procedure, 8(b)(4)(D) conduct is usually prerequisite to issuance of a complaint.

33/ See Brady-Hamilton Stevedore Co., 198 NLRB No. 18, sl. op., p. 6 (1972). The same result obtains when the picketing union secures its award through an agreed-upon procedure. See text accompanying note 46, infra.

34/ See N.L.R.B. v. Plasterers, supra note 4. See also note 30 supra; p. 10, infra. In Geo. E. Hoffman, supra note 22, 195 NLRB at 95, the Board stated:

To hold that the Board can determine the dispute because of Local 627's failure to follow the agreed-upon method, viz, to refer the dispute within 5 days, would be to ignore the distinction that the statutory language makes between the mere existence of an "agreed-upon method for the voluntary adjustment" of a jurisdictional dispute as opposed to an actual "adjustment" of the dispute. If either exists, the Board has no authority to determine the dispute.

35/ See Section 10(k); Rules and Regulations, Sections 102.90, 102.93; Statements of Procedure, Section 101.33.

## 1. Agreed-Upon Methods

For an agreed-upon method to preclude Section 10(k) proceedings, all parties must have voluntarily agreed to use that procedure and be bound by its determinations. The agreement must bind the employer who has assigned the disputed work and all disputing unions or employee groups.

Whatever the type of agreed-upon method, all parties to the dispute must have agreed to be bound by the same method. A grievance-arbitration procedure, for example, may constitute an agreed-upon method of adjustment that would preclude a 10(k) proceeding, but it would not have such an effect when a party is not obligated to use the procedure. 36/ It is immaterial that an employer has agreed to such procedures in individual contracts with the unions involved if such individual grievance-arbitration procedures do not require participation by all parties to the dispute. 37/ Similarly, an employer would not be considered bound to the procedures of the Impartial Jurisdictional Disputes Board 38/ to resolve a particular dispute simply because it agreed to utilize that method in an unrelated agreement with a union not involved in the dispute. As the Board asserted in Fabcon, Inc., ". . . what is critical here is whether the Employer has an agreement which requires it to utilize that procedure to resolve the instant dispute." 39/

However, if the unions involved do agree to participate in grievance proceedings under a particular contract between the employer and one of the unions, such an ad hoc procedure may qualify as a voluntary method agreed upon by all the parties.

36/ See e.g., C. Iber & Sons, Inc., 204 NLRB No. 18 (1973) (unrepresented employees as a "class" not bound); John V. Warren, Inc., 203 NLRB No. 185 (1973) (employer not bound); Joseph E. Seagram & Sons, Inc., 198 NLRB No. 64 (1972) (respondent union not bound). See also Union-Tribune Publishing Co., 201 NLRB No. 126 (1973), where both unions' contracts provided for 5-member arbitration panels but differed as how the fifth arbitrator would be selected.

Parenthetically, it may be noted that the Board has refused to apply Collyer Insulated Wire, 192 NLRB 837 (1971), to work assignment disputes when there is no single arbitration provision that binds all parties. Continental Can Co., Inc., 202 NLRB No. 78 (1973). Cf. Hutchinson Publishing Co., 205 NLRB No. 93 (1973).

37/ See Philco-Ford Corporation, 203 NLRB No. 99 (1973) (IUE not party to IBT grievance procedure or bound by award made by Joint Area Grievance Committee); Eazor Express, supra note 23, at 9-10. Cf. Straight Creek Constructors, 203 NLRB No. 171 (1973).

38/ The Impartial Jurisdictional Disputes Board ("Disputes Board" or "IJDB"), the successor to the National Joint Board, is discussed in detail at pp. 12-17, infra.

39/ 203 NLRB No. 177, sl. op., p. 6 (1973). See also Concrete Erection, 195 NLRB 232 (1972) and cases cited in Fabcon, at n. 5. On the other hand, a single method to which a party is bound by virtue of contracts or affiliation does constitute an "agreed-upon" procedure. See F. W. Owens and Associates, 205 NLRB No. 156, sl. op., pp. 5-7 (1973).

Regional Directors should submit for advice cases presenting substantial issues as to whether all the parties are bound to an agreed-upon method for adjusting work assignment disputes.

## 2. "Actual Adjustments"

Where a work assignment and an agreed-upon method are found to exist, 8(b)(4)(D) charges are held in abeyance, and no complaint is issued unless the voluntary procedure fails to produce an "actual adjustment" <sup>40/</sup> of the work assignment dispute. <sup>41/</sup> If the agreed-upon method does not result in an actual adjustment, as when a party is unwilling to submit the matter for resolution through the voluntary procedures, the Region does not institute Section 10(k) proceedings. <sup>42/</sup> Rather, consideration is given to issuance of an 8(b)(4)(D) complaint. That determination depends in part on whether there has been an actual adjustment of the work assignment dispute:

When there is an agreed-upon method for adjusting the dispute -- it is only where an actual adjustment results that Section 10(k) and the Board's regulations authorize dismissal of the charge. <sup>43/</sup>

<sup>40/</sup> McCloskey & Co., 147 NLRB 1498, 1503 (1964); Iron Workers, Local 125 (The Ralph M. Parsons Company). 186 NLRB 868, 870 (1970). In Parsons, the Appeals Board of the National Joint Board decided, in essence, that the employer would have the option of assigning the disputed work to the employees of his choosing. When Parsons assigned the work to the Millwrights, who had previously performed the work, the Iron Workers, although party to the Joint Board proceedings, struck and picketed. The Board found that the Iron Workers violated Section 8(b)(4)(D) "by attempting to force the Employer to reassign the work in dispute to its members, in contravention of the . . . award of the Appeals Board of the National Joint Board." Ibid. It noted that the award gave the employer the option to assign work to the Iron Workers under certain circumstances, but did not require the employer to do so under any circumstances.

<sup>41/</sup> See N.L.R.B. v. Operating Engineers, supra note 30; Hansen's, Incorporated, 192 NLRB 139 (1971); Rules and Regulations, Section 102.93. As with the procedure itself, all parties must have agreed to be bound by the award or decision under the agreed-upon method. See text accompanying notes 36 and 37, supra.

<sup>42/</sup> See Hoffman, supra note 22, quoted in note 34 supra.

<sup>43/</sup> Iron Workers, Local 125, supra note 40, 186 NLRB at 870. Accord: McCloskey & Co., supra note 40, 147 NLRB at 1503. See also Bigge Drayage, supra note 20. Cf. Babcock & Wilcox, 199 NLRB No. 146, where the agreed-upon procedure--discussion between representatives of the Internationals whose locals were vying for the work--failed to produce a settlement, and one of the disputant locals refused to abide by that procedure's prohibition against work stoppages pending settlement.

In this connection, it is noted that the rules for the new Disputes Board continue the provision of the former Joint Board allowing Internationals to establish settlement procedures among themselves and to have a "reasonable length of time as determined by the Chairman in which to effect a settlement" before IJDB procedures are implemented.

An "actual adjustment" exists when the parties in fact "settle" the dispute, for example, by reaching full agreement, or when an agreed-upon method of voluntary adjustment culminates in a decision or award which resolves the dispute, providing that the respondent union is complying with the settlement agreement, decision, or award. Just as when the parties comply with the Board's Section 10(k) determination, no complaint is issued if there has been an "actual adjustment" of the dispute through an agreed-upon method. 44/

However, if the voluntary procedures fail to adjust the dispute, an 8(b)(4)(D) complaint may then be warranted. Thus, when a union refuses to abide by a decision or settlement agreement resulting from an agreed-upon method and engages in 8(b)(4)(D) conduct, the Region would proceed to a complaint. 45/ Complaint would also be warranted where no resort is made to an agreed-upon method binding on all parties. On the other hand, where a union is awarded the disputed work under an agreed-upon method, it would be privileged under Section 8(b)(4)(D) to use economic sanctions to obtain employer compliance with the award under the parties' adjustment procedure. 46/

The Regions should submit for advice cases raising substantial questions as to whether the voluntary method has actually adjusted the work assignment dispute.

### 3. Plan for Settlement of Jurisdictional Disputes: Impartial Jurisdictional Disputes Board

Disputes in the construction industry have constituted the main area for application of the work assignment dispute sections of the Act. And the voluntary procedures for resolution of such disputes in the construction industry have been of major importance in the administration of 8(b)(4)(D) and 10(k). Because of these circumstances, discussed below are significant aspects of the new Plan for Settlement of Jurisdictional Disputes and the Impartial Jurisdictional Disputes Board which replaced the old Joint Board. 47/

44/ See note 30 supra.

45/ Rules and Regulations, Section 102.93. See McCloskey & Co., supra note 40, at 1502-03; Acoustical Contractors Association of Cleveland, 119 NLRB 1345, 1350-55 (1958), cited with approval, Carey v. Westinghouse Corp., 375 U.S. 261, 264 n. 4 (1963); cases cited at note 43, supra.

46/ See Geo. E. Hoffman, supra note 22, at 94-95, relying in part upon Wm. F. Traylor, 97 NLRB 1003, 1006-07 (1957); Acoustical Contractors Association, supra note 45, at 1353. Cf. Brady-Hamilton Stevedore Company, supra note 33, at 6; Irving v. Local 6, Iron Workers, 71 LRRM 3186, 3188 (W.D.N.Y., 1969).

47/ National Joint Board for the Settlement of Jurisdictional Disputes in the Construction Industry ("Joint Board" or "NJB").

The most frequently encountered voluntary method for adjusting work assignment disputes, the Joint Board, was succeeded, effective June 1, 1973, by the Impartial Jurisdictional Disputes Board, pursuant to agreement between the AFL-CIO Building and Construction Trades Department and various employer groups, including the Associated General Contractors ("AGC"). 48/ The fundamental structural difference between the two boards is that the new Disputes Board comprises "three impartial members who are knowledgeable or experienced in the construction industry but who are not employed in the construction industry by either the labor or management segments of the industry, except that the Chairman or any member may be appointed from either segment of the industry if the Joint Administrative Committee is unanimous in its selection." 49/ The chairman is not only chosen by the new Joint Administrative Committee, but also

\* \* \* shall be appointed on a full time basis for the duration of this Agreement with provision for automatic continuance of the chairmanship for any extension or renewal of this Agreement for a period of five years from the date of his selection by the Joint Administrative Committee with provision for renewal. Art. III, Sec. 4.

Significant differences in the procedures and rules of the Disputes Board and the Joint Board are pointed out in the following discussion of Section 10(k) problems that may arise in connection with the obligations to be bound by Disputes Board proceedings.

(a) Obligations of Labor Organizations

As under the NJB rules, the 1973 Plan's procedures apply to "all unions affiliated with the [Building Trades] Department". 50/

48/ Other signatory associations include the National Constructors Association; the National Council of Erectors, Fabricators and Riggers; the National Association of Miscellaneous Ornamental & Architectural Products Contractors; Sheet Metal & Air Conditioning Contractors National Association; Mechanical Contractors Association of America, Inc.; National Erectors Association; National Electrical Contractors Association, Inc.; National Insulation Contractors Association; and International Association of Wall and Ceiling Contractors.

49/ Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "1973 Plan"), Art. III, Section 3. The Joint Administrative Committee (JAC), which replaces the old Joint Negotiating Committee, includes four representatives from the Department and four from the employer associations and selects the three-man Disputes Board, its chairman, and the Impartial Umpire of the Hearings Panel and the Appeals Board. The unions and employers will alternate the annual selection of the nonvoting chairman and vice-chairman of the JAC. Art. III, Sec. 2.

50/ Art. I (b). Although the I.B.E.W. is affiliated with the Building Trades Department and was bound to the procedures of the Joint Board, it did not participate in Joint Board proceedings with respect to

(continued)

And, like the NJB, the LJDB will take no action on protests or requests from local unions or building trades councils; a local must process its jurisdictional complaints through its International. However, locals of international unions which are bound to use Disputes Board procedures would, as under the prior Joint Board Procedures, also be viewed as bound by virtue of the obligations that their Internationals assumed on their own behalf and on behalf of the locals. 51/

A particularly significant change under the new Plan is the treatment of unions which have refused to comply with prior awards to other unions. Pursuant to prior Joint Board procedures, such "noncomplying" unions could neither receive awards from the Joint Board nor have representation on the NJB. 52/ The new Disputes Board's rules and regulations themselves contain no such penalties. Instead, the Building Trades Department has adopted a resolution whereby Internationals would be fined (between \$250 and \$1,000 per working day)

50/ (cont'd.) "outside" construction work, e.g., installing overhead or underground transmission cables. (That position is based upon the assertion that such locals whose members performed that type of work do not pay per capita dues to or have membership in the Department.) When the dispute has been found to be over "outside" work, the Board has held that the I.B.E.W. local involved is not, therefore, bound to the Joint Board procedures. See JRJ Excavating Co., Inc., 189 NLRB 929, 930 (1971); Utility Service Corp., 172 NLRB 1877, 1879 (1968); Egan-McKay Electrical Contractors, Inc., 164 NLRB 672, 673 (1967); Nichols Electric Co., 137 NLRB 1425, 1429 (1962); 140 NLRB 458, 459, enf'd., 326 F. 2d 213, 216 (C.A. 3, 1964).

Thus, unless the I.B.E.W. or its local involved takes a contrary position, Section 10(k) proceedings are warranted in cases involving I.B.E.W. locals when the disputed work is "outside" construction work. However, cases raising substantial questions as to whether a particular local of I.B.E.W. or any other International is bound by the Disputes Board Plan should be submitted for advice.

51/ 1973 Plan, Art. VIII, Section 2. Cf. F. W. Owens, supra note 39. The Joint Board did not consider disputes involving unions not bound to its procedures or between rival locals of the same international. The LJDB rules do not suggest that it would consider such disputes, either. Thus, in such cases, absent evidence of other voluntary methods of adjustment, Section 10(k) proceedings are warranted.

52/ In V & C Brickcleaning Co., 199 NLRB No. 48 (1972), 203 NLRB No. 176 (1973), the Board held that noncomplying unions, having "agreed upon" the procedures of the Joint Board as the method for resolving jurisdictional disputes, were still bound to those procedures, notwithstanding their "noncompliance" status. In its second opinion, the Board noted that the record indicated no withdrawal from the previously agreed-upon method, apart from the noncompliance with the Joint Board's awards, and stressed that the parties could establish rules for withdrawals, thereby controlling the binding effect of existing "agreed-upon methods" for resolving work assignment disputes (sl. op., p. 3). See also F. W. Owens, supra note 39; Godwin Bevers Co., 205 NLRB No. 22 (1973); Affholder, Inc., 203 NLRB No. 182 (1973). Cf. Fabcon, Inc., supra note 39, at 2, n. 2; P & G Erectors, Inc., 203 NLRB No. 178, sl. op. pp. 6-7 (1973).

for engaging in activity prohibited by the Plan. 53/ And, as under the old Plan, the Disputes Board "will not make a job decision in a jurisdictional dispute while there is a work stoppage caused by the contractor holding up or shutting down work, or caused by the trade which is requesting the job decision." 54/

The new Plan provides for withdrawals by participating employer associations, but contains no reference to withdrawal from the Plan by the participating unions.

(b) Obligations of Employers

Employers employing members of organizations affiliated with the Building Trades Department can be bound by the terms of the 1973 Plan through:

- (a) a stipulation to that effect;
- (b) membership in a "stipulated association of employers with authority to bind its members"; 55/ or
- (c) such a provision in a collective-bargaining agreement, 56/ provided that those "employers who have agreed to be so bound, but were not parties to the predecessor Plan for Settling Jurisdictional Disputes . . . must reaffirm their agreement in order to be accepted in this Plan." 57/

Also, the Impartial Jurisdictional Disputes Board will not recognize any contractor stipulation "if it is shown to the satisfaction of this Board that it is the result of unlawful strikes, work stoppages or other coercive activity which is contrary to the voluntary nature of this Plan . . . or

53/ See V & C Brickcleaning, supra note 52, 203 NLRB No. 176, at 3-4.

54/ "Procedures Used by the Board," Sec. B.

55/ See, e.g., O. Frank Heinz Construction Company, Inc., 187 NLRB 401, 403 (1970), 36 NLRB Ann. Rep. 86 (1971). Cf. Fabcon, Inc., supra note 39, and discussion at p. 10, supra.

56/ Art. I(a). For a review of the problems pertaining to employer obligations through association membership which arose under the Joint Board, see Affholder, Inc., supra note 52; Modern Cooling, Inc., 199 NLRB No. 153, 37 NLRB Ann. Rep. 122 (1972); Winn-Senter Construction 194 NLRB 392 (1971); Lembke Construction Company of Colorado, Inc., 194 NLRB 649 (1971); Elias Morris & Sons Co., 194 NLRB 660 (1971).

57/ After the AGC withdrew from participation in the Joint Board, some local AGC chapters entered into collective-bargaining agreements that bound their employer-members to use whatever procedures the AGC adopted in the future. Now that the AGC is a party to the new Disputes Board, employer-members of local AGC chapters which entered into such agreements would not be bound by the Disputes Board procedures unless their chapters "reaffirmed" those "me-too" agreements or they individually stipulated to be so bound.

that it results from the compulsion of legal or contractual proceedings arising from pre-existing labor management agreements." 58/

Under the new Plan, an otherwise bound employer who is struck or picketed over his work assignment can be released from following the Disputes Board procedures. Thus, in the event of a work stoppage, the contractor "shall elect, and be bound by, one of the following alternative courses of action" [Art. VII, Sec. 2]:

(a) He may immediately notify the LJDB Chairman of the work stoppage, then follow the Plan's procedures for ending the strike, but if the work stoppage continues for more than 48 hours after the notification," 59/ the contractor may either attempt to stop the strike through "legal" methods, while LJDB proceedings are pending, or pursue other methods to settle the dispute.

(b) The employer "may seek immediate judicial relief while pursuing the procedures of the Agreement to arbitrate the underlying dispute, thereby relieving the International Union of the application of the procedures specified in Article VIII, Section 2(e) of this Plan for that particular dispute." 60/

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58/ Art. I(a).

59/ The old Joint Board agreement similarly provided that, when informed of jurisdictional picketing, the NJB chairman would send a "notification" to the local Building Trades Council and the International whose local was picketing. If work stoppages persisted for more than 48 hours after such "notification," the picketed contractor was free to pursue other methods of settlement.

See Painters Local 328 (The Ralph M. Parsons Company), 188 NLRB 965, 966-967 (1971), where the Board found that, pursuant to these rules, the employer was "exempted" from the agreed-upon method when a Painters local, disregarding NJB notification to cease picketing picketed for more than 48 hours after receipt of the notification. The Board held that the subsequent Joint Board award to the Painters did not bar a Section 10(k) proceeding. Since option "a" is similar to the provisions of the old Plan, Parsons would appear applicable to an employer's choice of that alternative under the new Plan.

60/ Under Article VIII, Section 2(e), the Impartial Umpire is empowered to seek an agreement between the presidents of the Internationals involved and, if unsuccessful, to docket the matter for a hearing and decision. Supporting that procedure is the aforementioned Department-imposed sanction of fines meted out by the Umpire. (See text accompanying notes 52-54, supra.)

As under the old Plan, the Hearing Panels comprise two disinterested General Presidents appointed by the Department's Executive Council, two disinterested employer representatives appointed by the signatory contractors associations, and the Impartial Umpire.

However the 1973 Plan provides the following with respect to option "b":

Choice of this option for a particular work stoppage by the Employer does not relieve any of the parties of their other obligations under this Plan, nor shall it operate to defer or avoid the resolution of the underlying jurisdictional dispute in accordance with the procedures of this Plan.

Since centralized handling of problems arising under the new Disputes Board procedures is of particular importance, at least at the early stages of the new Plan, Regional Directors should submit for advice those cases presenting substantial issues as to the obligations of employers or unions under the Dispute Board procedures.

In addition, telephonic clearance from the Division of Advice should be obtained prior to instituting any 10(k) proceedings, 8(b)(4)(D) complaints, or 10(1) proceedings in any case involving parties bound by the Disputes Board. 61/

E. Procedure in CA or CB Charges  
Related to Work Assignment Disputes

In Brady-Hamilton Stevedore Company, 62/ the Board held that Section 8(a)(3) is inapplicable "in situations where the actions of all parties are part and parcel of an acute, bona fide jurisdictional work dispute," since Sections 8(b)(4)(D) and 10(k) provide the exclusive means for resolving work assignment disputes. 63/ Following Brady-Hamilton, the Board dismissed not only 8(a)(3) charges, but also 8(b)(2), 8(b)(1)(A) and 8(a)(5) charges in J. L. Allen Co., 64/ which presented a "classic", "bona fide" jurisdictional dispute "cognizable [only] under the provisions of Sections 8(b)(4)(D) and 10(k)."

61/ Clearance should be made by telephoning James T. Youngblood in the Division of Advice (202 - 254-9134). Questions as to whether an employer is bound by the new Plan and as to the status of matters before the Disputes Board should also be telephonically communicated to Mr. Youngblood.

62/ 198 NLRB No. 19 (1972).

63/ Id. at 5. The Board had earlier considered the dispute in a 10(k) proceeding (181 NLRB 315, 1970) and an 8(b)(4)(D) complaint case (193 NLRB 266, 1971).

64/ 199 NLRB No. 111, sl. op., p. 4 (1972). The alleged refusal to bargain was considered "merely part and parcel of the bona fide jurisdictional work dispute . . . and was so inseparably intertwined with the other conduct . . . that to find and remedy any such violation would also stand in conflict with the remedial scheme contemplated by Congress as the exclusive means for resolution of work-assignment claims between competing labor organizations." Id. at 5-6.

The Board in Allen (id. at 5 n. 4) also overruled Cement-Work, Inc. 65/ to the extent that the procedures utilized therein were inconsistent with Allen.

The following procedures should be utilized in Section 8(a)(3), 8(a)(5), 8(b)(2), and 8(b)(1)(A) cases which essentially involve controversies over the employer's assignment of work:

(1) When Section 10(k) proceedings are instituted upon 8(b)(4)(D) charges, the Region should defer action on any related CA and/or CB charges, pending the Board's determination as to whether a work assignment dispute exists. If the Board determines that a work assignment dispute exists, the parallel CA and/or CB charges should be dismissed, absent withdrawal, under Brady-Hamilton and Allen.

(2) When no 8(b)(4)(D) charge is filed, the CA and CB cases should be submitted for advice, except where it is entirely clear that the underlying dispute is a "bona fide" work assignment dispute. 66/

(3) When it is entirely clear that there is no "bona fide" work assignment dispute within the meaning of Section 8(b)(4)(D) and that no Section 10(k) or any agreed-upon jurisdictional dispute proceedings are to be initiated, the Regional Director should act at his own discretion. 67/

## II. DISCRETIONARY SECTION 10(1) INJUNCTIONS IN SECTION 8(b)(4)(D) CASES

### A. Guidelines in Seeking Injunction

Section 10(1) requires that preliminary injunctions be sought wherever complaints alleging violations of Section 8(b)(4)(A), (B), and (C), 8(b)(7) and 8(e), are issued, but Section 10(1) proceedings in 8(b)(4)(D) cases are discretionary. If, however, it is determined that there is reasonable cause to believe a labor organization is engaging in conduct proscribed by Section 8(b)(4)(D) and that such

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65/ 140 NLRB 694 (1963).

66/ This applies irrespective of whether the parties are bound to an agreed-upon procedure for adjusting work assignment disputes.

67/ In this connection, it is noted that Allen, unlike Brady-Hamilton, involved no contemporaneous 8(b)(4)(D) charges.

conduct is continuing or is likely to resume, Section 10(1) proceedings are generally warranted. This is true either where 10(k) proceedings are appropriate 68/ or when there is an all-party agreed-upon procedure for settling work assignment disputes. 69/ Neither a Section 10(k) hearing nor a 10(k) award is a prerequisite to a Section 10(1) injunction. 70/

When an all-party adjustment procedure exists, the decision to seek 10(1) relief generally involves the same considerations as do situations when 10(k) proceedings are instituted. 71/ But where no party to an agreed-upon voluntary procedure submits the dispute for resolution, the question whether 10(1) procedures will be instituted should be submitted for advice. Such cases present, of course, the question whether discretionary 10(1) relief should be sought where the charging party has available an agreed-upon method of adjustment for resolution of the basic dispute. His refusal to submit the dispute is a factor in deciding whether the seeking of 10(1) relief is warranted.

The LJDB Plan, for example, contains a procedure for terminating strike conduct, *i.e.*, work stoppages in jurisdictional disputes must cease within 48 hours after the Disputes Board has been notified of the dispute. 72/ When the disputing parties are bound to the LJDB agreement, the employer would be viewed as refusing to utilize an available expeditious method of ending strike conduct if he files 8(b)(4)(D) charges, but withholds notification to the Disputes Board. Absent compelling reasons for that failure to notify the LJDB, no 10(1) relief would be sought in such circumstances, even though an 8(b)(4)(D) complaint may be warranted if the parties' agreed-upon method does not actually adjust the work assignment dispute. 73/

68/ See, *e.g.*, Douds v. I.L.A., 242 F. 2d 808, 812 (C.A. 2, 1957); Shore v. Boilermakers, Local 154, 79 LRRM 2016, 2020 (W.D. Pa., 1971); Reynolds v. Lathers, Local 253, 63 LRRM 2142, 2144 (W.D. Ark., 1966). Cf. Brown v. Roofers Union, Local 40, 24 LRRM 2472, 2474 (N.D. Calif., 1949).

69/ Cf. Schauffler v. Local 420, United Association, etc., 218 F. 2d 476, 481 (C.A. 3, 1955); McLeod v. Newspaper and Mail Deliverers' Union of New York City, 209 F. Supp. 434, 439-440 (S.D.N.Y., 1962). However, courts have dismissed 10(1) petitions if it appears that the agreed-upon method has resulted in an award to the respondent union. See Sperandeo v. Bricklayers, Local 1 (Lembke Construction Co.), 77 LRRM 2479, 2481 (D. Colo., 1971); Irving v. Local 6, Iron Workers, 71 LRRM 3186 (W.D.N.Y., 1969). See also text at notes 33, 46, *supra*.

70/ Herzog v. Parsons, 181 F. 2d 781, 786 (C.A.D.C., 1950), *cert. denied*, 340 U.S. 810 (1950); Local 450, Operating Engineers v. Elliott, 256 F. 2d 630, 634 (C.A. 5, 1958); McLeod v. Newspaper and Mail Deliverers' Union, *supra* note 69, at 440. Cf. Heiter-Starke Printing Company, Inc., 121 NLRB 1013, 1014-1015 (1958).

71/ See pp. 8 -9 , *supra*. However, an agreement not to engage in future 8(b)(4)(D) conduct, while perhaps insufficient as a disclaimer (see p.7 , *supra*), may nevertheless provide a basis for dispelling the need for Section 10(1) proceedings.

72/ See pp.16-17, and note 59, *supra*.

73/ See p. 12, *supra*.

Where, however, a union party to the LJDB procedures merely threatens, without engaging in, a work stoppage (so that the 48-hour notice provision would apparently be inapplicable), the employer's failure to notify the Disputes Board would present a different problem. Yet even in this case the absence of notification might militate against proceeding under Section 10(1), since the LJDB, upon notification, might well have resolved the dispute promptly.

Thus, in most situations, whether involving a work stoppage or a threat thereof, Section 10(1) relief would not be warranted where no party has notified the LJDB, unless there are compelling reasons for the charging employer's failure to do so. In cases where no notification has been given, but the charging employer submits purportedly compelling reasons to the Region, Washington advice should be sought before seeking 10(1) relief.

#### B. Scope of the Injunction

The same considerations upon which the Board relies in fashioning its 10(k) determinations govern the scope of 10(1) injunctions sought. <sup>74/</sup> Thus, where the 10(1) injunction is ancillary to a 10(k) proceeding, the injunction is limited to restraining the 8(b)(4)(D) conduct covered in the 10(k) proceeding. If the dispute is on one job and there is no background of a similar dispute with the same employer or indication that the dispute will involve other jobs within the disputing unions' jurisdiction, an injunction extending beyond the particular job would appear unwarranted.

On the other hand, if the dispute between the unions and employer is a recurring one and would likely spread to other sites, the injunction sought should not be confined to the particular site but should restrain any repetition of the conduct at other sites. <sup>75/</sup> Similarly, a broad injunction prohibiting 8(b)(4)(D) conduct against many employers might be warranted when the respondent union is engaged in an ongoing work assignment dispute with numerous employers. <sup>76/</sup> Such an injunction,

<sup>74/</sup> The Board, as noted earlier, ordinarily makes its 10(k) award applicable only to the particular job at issue, although it may sometimes be broader in scope, e.g., co-extensive with the jurisdiction of the unions involved. (See note 26 *supra*)

<sup>75/</sup> See, e.g., Schauffler v. United Association, *supra* note 69, at 479-480.

<sup>76/</sup> Cf. Burns and Roe, Inc., 162 NLRB 1617, 1622 (1967), enf'd in this regard, sub nom., N.L.R.B. v. Operating Engineers, Local 825, *supra* note 30, at 10-11, rev'd. on a different point, 404 U.S. 297 (1971), where the Board entered a broad order directing the union to cease and desist from engaging in any 8(b)(4)(D) conduct in future work assignment disputes on the large project involved therein. In support of the 8(b)(4)(D) complaint, the District Court, upon consent, entered a 10(1) injunction that was broad with respect to employers, though limited to disputes over a particular type of work. See 162 NLRB at 1622 n. 12. In view of the Board's order, it would seem that an injunction could have been equally as broad.

however, would generally be limited to the particular kind of work and, of course, the geographical area of the unions involved. 77/

A broad injunction might also be sought where the employer involved is party to association-wide contracts with the union and the association members have similar practices and the Board in Section 10(k) proceedings might make an association-wide determination.

Regions should submit for advice cases where discretionary Section 10(1) proceedings would be novel, not clearly governed by controlling precedents, or otherwise raise substantial issues as to the propriety or breadth of injunctive relief.

### III. LISTING OF PROBABLE ADVICE ISSUES

#### A. Section 8(b)(4)(D) Issues

1. Issues regarding "proscribed means" under Section 8(b)(4)(D) that are novel, not clearly governed by controlling precedents, or otherwise appropriate for submission.

2. Substantial questions as to the existence of a work assignment dispute, including those arising out of demands in contract negotiations.

3. Substantial questions as to the sufficiency of a purported disclaimer.

4. Substantial issues as to whether all parties are bound to an agreed-upon method for adjusting work assignment disputes.

5. Substantial questions as to whether an agreed-upon method has actually adjusted the work assignment dispute.

6. Substantial issues as to the obligations of employers and unions under Disputes Board procedures, including whether a particular local union performing "outside construction" work is bound by the Disputes Board Plan. 78/

7. When no Section 8(b)(4)(D) charge is filed, CA and CB cases related to controversies over the employer's assignment of work, except where it is entirely clear that the underlying dispute is a "bona fide" work assignment dispute.

77/ See Borchardt v. Local 449, United Association, etc., (Refrigeration Equipment Co.) 26 CCH Lab. Cas., para. 68,641, at 87,154 (W.D. Pa., 1954). Cf. Burns and Roe, supra note 76; cases cited at note 26 supra.

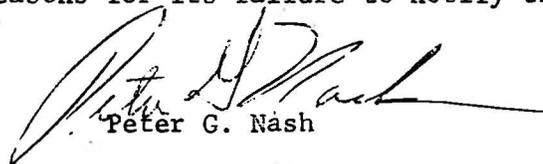
78/ Division of Advice clearance should be obtained prior to instituting any 10(k) proceedings, 8(b)(4)(D) complaints, or 10(1) proceedings in cases involving parties bound to the Disputes Board Plan.

B. Section 10(1) Issues

1. Where Section 10(1) proceedings would be novel, not clearly governed by controlling precedents, or otherwise raise substantial issues as to the propriety or appropriate breadth of injunctive relief.

2. Whether Section 10(1) proceedings should be instituted when no party who is bound to an agreed-upon procedure submits the work assignment dispute for resolution.

3. In disputes involving parties bound to the Impartial Jurisdictional Disputes Board procedures, when the IJDB has not been notified of the work assignment dispute, but the charging employer submits purportedly compelling reasons for its failure to notify the Disputes Board.



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