

FACTS

I. Background.

City Center for Music and Drama (“the Employer”) manages the Koch Theater, a performing arts venue at Lincoln Center in New York City.¹ Stage Employees IATSE Local One (“the Union”) represents employees who perform various production services for the entertainment industry in New York City. The most recent collective-bargaining agreement between the Employer and the Union was effective from November 15, 2012 through November 14, 2014. Article 2 of the agreement, titled “Jurisdiction,” states in pertinent part:

[t]he jurisdiction of the Union extends to all Carpentry, Electrical and Property work to be done to, at, in or on the stage, auditorium, orchestra pit, wings, fly galleries, pin rails, counterweight galleries, loading dock, scenic, prop and wardrobe storage, carpenter shop, electrical effects shop, carpenter’s office, stagehands’ locker room and lounge, and miscellaneous storage areas assigned by management to the stage and the projection booth when not being used for film showings. The jurisdiction includes all work performed in the normal installation and in the maintenance, repair, upkeep, setting, striking, dismantling, operation, movement and/or handling of the following in the areas specified above.

Section 14(a) of the agreement, titled “Television,” states that “[i]t is understood that closed circuit projection shall be operated the same as heretofore.”² Section 14(b) states that

¹ The collective-bargaining agreement between the Employer and the Union states that the Employer “leases from Lincoln Center for the Performing Arts, Inc. the David H. Koch Theater.” However, the Employer’s witness in this case, and the Koch Theater website, state that the Employer manages the Koch Theater.

² According to the Employer, the closed-circuit projection referred to in Article 14(a) refers exclusively to a single camera at the Koch Theater that is used to project the stage onto closed-circuit televisions located throughout Lincoln Center’s offices and other work areas. The camera shows the stage 24 hours a day, regardless of what is happening on the stage, and it does not require a camera operator. The Union is responsible only for maintaining the camera equipment and, on occasion, adjusting the camera when necessary. However, according to the Union, Article 14(a) applies to any closed-circuit projection of any filmed material that is shown exclusively inside the Koch Theater and that is not projected or streamed elsewhere.

[i]n the event any show or segment of a show is to be filmed, taped or televised at or from the Theater or if the Theater is at any time to be used for filming, taping or televising of any other material, the Employer shall be obligated to notify the Union thereof in writing at least 10 days in advance of the day on which such activity is to commence, and it is agreed that any and all stagehands' work, as described in Article II of this agreement, required to be performed in connection with such activity, shall be done exclusively by employees of the Employer under and pursuant to the terms of this agreement. . . .

For about twenty-two weeks of the year, the New York City Ballet leases the Koch Theater. During the remainder of the year, the Employer leases the theater to other outside entities. When an outside entity leases the Koch Theater, the entity must inform the Employer about the content of their event and the work it will require. The Employer's Technical Director is responsible for communicating with outside entities regarding the manpower necessary to set up, run, and take down a proposed event at the Koch Theater. The Technical Director tells the entity if the Employer is required to use any of its union-represented employees to perform specified work because it falls within a union's work jurisdiction under a collective-bargaining agreement. The Employer then enters into a license agreement with the outside entity that, among other things, retains for the Employer's own union-represented employees any event-related work covered by a collective-bargaining agreement.

After the Employer has secured a license agreement from the entity leasing the theater, it makes arrangements to hire the employees that it needs to put on the event. For work within the Union's jurisdiction, the Technical Director communicates with each crew head – there is a separate crew head for carpentry, electrical, and property/prop work – and specifies how many employees are needed to stage an event. The employees hired are placed on the Employer's payroll. After the Technical Director reviews and approves the payroll for an event, the employees are paid directly by the Employer.

From 2011 through 2014, Union-represented employees performed the following camera operation work during events held by outside entities that leased the Koch Theater. The camera work was projected exclusively inside the Koch Theater and was not broadcast or streamed elsewhere.

- In January 2011, three Union-represented camera operators were assigned to an event called Shen Yun for seven days. The filming for the event was closed circuit, meaning the footage was not broadcast outside the Koch Theater.
- In July 2011, a Union-represented camera operator was used for an event called Diageo. The event was also a closed-circuit event.

- In December 2011, a Union member operated the camera for a four-hour call for the New York City Ballet's New Media event. The work was labeled as "video capture" on payroll documents.
- In 2012, Union-represented employees were assigned camera operation work on three occasions, once for New York City Ballet New Media, and twice for Daily Beast Women of the World. The New Media event involved "video capture" of a New York City Ballet production, as before. The latter two events were closed-circuit operations.
- On April 4, 2013, two Union members operated cameras for a Women of the World event.
- On September 6, 2013, three Union members served as camera operators for an event for Elle Magazine.
- On November 12, 2013, one Union member worked as the camera operator for an Ernst & Young event during which cameras were used to project event speakers onto large screens placed on the stage.
- On November 5, 2014, one Union-represented camera operator was used at an Ernst & Young event.

Also during this period, to avoid displacing Union-represented employees, the Employer hired Union members to perform the following work when outside entities leasing the Koch Theater used camera operators not represented by the Union:³

- On April 18, 2013, for an event called Youth American Grand Prize, the outside entity brought in two outside camera crew members, so two Union members were assigned to camera-related work. One member assisted with running cables and the other was part of the "Lobby Crew," although the duties and significance of this crew were not explained.
- On September 10, 2014, one Union member performed setup work for a lecture put on by the Joyce Theater.

³ The Union maintains that it has historically not required the Employer to prevent outside entities leasing the theater from using camera operators of their own choosing, but it has insisted that no Union member be displaced because of such an arrangement. The Union takes the position that this is not evidence that it relinquished its jurisdiction, but that its members are ready, willing, and able to work, and do perform as much work as possible in all instances.

- On December 9, 2014, one Union member was assigned to the “camera crew” for the New York City Ballet and performed setup work for an outside vendor who filmed the Nutcracker for promotional purposes.

II. The Events Leading to the Current Labor Dispute.

In early November 2014,⁴ the Employer entered into a license agreement with Live Ventures, LLC, to stage a live lecture series sponsored by Cosmopolitan Magazine titled, “Fun Fearless Life: A Cosmo Live.” The event involved several distinguished women from around the world giving speeches on the theater’s stage to a public audience. The load-in work for the event was scheduled to begin on November 6, with rehearsals to be held on November 7. The actual event was to be held on November 8 and 9, with the load-out process scheduled for the second-half of November 9. The license agreement that the Employer had Live Ventures enter stated, in relevant part, “[n]either party shall do anything to put the other in violation of any union contract or labor agreement pertaining to any individual or individuals now or hereafter performing labor, work or services at the Theater.”

In order for everyone in the audience to see the lecturers on stage up close, a large projection screen was set up on stage and three cameras placed in the audience. The three cameras were used to film the lecturers and project their images onto the screen in real time.⁵ Live Ventures contracted with a local production company, Production Glue, for assistance with setting up the technical aspects of the event. Production Glue then contracted with a media company, Clark Media, to provide the cameras and three workers to operate them.

By email of November 1, the crew head for the Union’s electricians told the Technical Director that the camera operators were to be provided by the Union. The next day, the Union’s Business Manager emailed the Technical Director stating that the Union would be claiming the camera work. He also stated that if the camera operators were under a contract with IATSE Local 600, a sister local, that would necessitate further discussion, otherwise, he was objecting to outside non-Union

⁴ Hereafter, all dates are in 2014 unless otherwise noted.

⁵ The Employer explained that three professional-grade cameras were used to film and project the event speakers onto large screens on the stage. Two stationary cameras were placed on tripods, one on either side of the theater. The third camera was handheld and rested on a shoulder harness. This handheld camera moved throughout the theater.

operators displacing Union members from performing work they had traditionally performed. By email of November 3, the Technical Director responded to the Business Manager by stating that three cameras would be used for the “Fun Fearless Life” event, that the operators would be IATSE Local 100 members, and that she did not believe Union members were needed to cover the event. Later that day, the Union’s Business Manager replied that he disagreed with the Technical Director regarding the non-use of Union members as the camera operators and that if the operators to be used were Local 100 members, he would inquire on his own as to what contract they were working under.

On November 6, the day of the load-in for the event, the Union’s Business Manager and a second Union agent showed up at the Koch Theater. After speaking with Clark Media’s three camera operators, the Business Agent told the Technical Director he had learned that one of them was an IATSE Local 52 member, one was an IATSE Local 100 member, and the third was non-union. He also said that he had learned from speaking with the camera operators that the two union operators were not working under their respective collective-bargaining agreements.

The Business Manager informed the Technical Director that he could have Clark media’s camera operators “kicked off” the job, and that she needed to hire three Union members to operate the cameras. The Technical Director responded that the work was not within the Union’s jurisdiction, to which the Business Manager responded that if the issue was not solved it could result in a picket. The Technical Director stated that she needed to speak to other Employer representatives regarding the matter.

The Technical Director informed her supervisor, the Employer’s Managing Director, about what had transpired, and he set up a meeting to discuss the issue with the Union representatives. Present at the meeting were the two Union representatives, the Managing Director, the Technical Director, and the Employer’s attorney, along with two representatives of the New York City Ballet. During the meeting, the Union’s Business Manager stated that if the Employer hired three Union members to operate the cameras, the issue would be resolved. The Employer’s attorney replied that if the Union continued to claim jurisdiction over the camera work, the Employer would file an unfair labor practice charge against it. After the Employer’s attorney made that threat, the Union representatives stormed out of the meeting and returned to the theater’s auditorium.

After realizing that the Union representatives were still in the auditorium, the Technical Director spoke with a representative from Production Glue, who told her that he had spoken with the Union’s Business Manager, and he had gotten the two camera operators from Locals 100 and 52 removed from the job because they were not working under their respective union contracts. The Production Glue representative also told the Technical Director that representatives of IATSE Locals 100 and 52 had

called the camera operators and told them they could no longer work the job. He further stated that the Union's Business Manager would agree to let Clark Media operate the cameras with its employees, but only if three shadow employees from the Union were also hired. The Technical Director told the Production Glue representative that the Employer did not want to establish a record of hiring Union-represented camera operators and, therefore, if Production Glue wanted to hire shadow employees, it would have to arrange a side agreement with the Union.

After their conversation, the Technical Director and the Production Glue representative spoke with the Union representatives during which time the Union's Business Manager stated that it was going to "get really ugly" and "get really bad" if the camera operator issue was not resolved. When the Union representatives were told that the Employer did not want shadow camera operators on its payroll and there would have to be a side agreement, the Union's Business Manager argued that because the Union's collective-bargaining agreement was with the Employer, all Union work must be on the Employer's payroll. He questioned the Technical Director as to why this was a problem, and she explained that the Employer was concerned about establishing a precedent. The Business Manager repeated that things were "going to get ugly," but told the Technical Director that he would agree to sign a non-precedential side agreement.

Following her discussion with the Union's Business Manager, the Technical Director reported to the Managing Director that the Union was willing to sign a non-precedential side agreement for the hiring of three shadow camera operators. The Managing Director said he would work on getting language for such an agreement. The Technical Director also reported to representatives of Production Glue and Live Ventures that it would cost about \$7,000 to \$10,000 to hire three shadow employees. She also told them that the Union had mentioned earlier that it would picket if the camera operator issue was not resolved. The company representatives told her they did not want to hire shadow employees, but felt pressured into doing so to avoid disrupting the event. They began calling their respective offices and eventually received clearance from a Live Ventures executive to hire three shadow employees from the Union. Thereafter, the Employer and the Union executed a side agreement for the shadow camera operators, which read in its entirety:

In connection with the Cosmo's "Fun Fearless Life" conference scheduled for this weekend, you have insisted that our Lessee employ three extra [Union] stagehands because the camera operators employed by its production company are non-union, and that those extra stagehands must be on the [Employer's] payroll. We do not believe that this is required by our collective bargaining agreement, but will accede to you [*sic*] request if you agree that no precedent or

practice is created by this incident, and that this agreement will under no circumstances be referred to or cited in the future.⁶

After the parties signed the side agreement, the Technical Director informed the Union crew head for the electricians that he should hire three shadow camera operators. The next day, November 7, three shadow camera operators arrived at the start of the workday and were placed on the Employer's payroll.

III. The Parties' Positions Regarding the Current Charges.

On November 12, the Employer filed a charge against the Union alleging, among other things, that it had violated Section 8(b)(4)(ii)(D) by threatening and coercing the Employer in an effort to force it and its lessee subcontractor to assign certain camera operator work to employees represented by the Union rather than to another group of employees. The charge also alleged that the Union had violated Section 8(b)(6) by causing the Employer to hire and pay shadow employees for services that were not performed.

A. The Employer Asserts that the Camera Operator Work Performed During the "Fun Fearless Life" Event Was Not Within the Union's Work Jurisdiction.

The Employer asserts that the disputed camera operation work was not included in the jurisdiction language of the parties' collective-bargaining agreement. It asserts that the circumstances where the Union has jurisdiction over camera operation work are limited and explicitly stated in the contract. Thus, because the contract does not specifically refer to the type of camera work performed for the "Fun Fearless Life" event, the Union did not have jurisdiction over the disputed work.

The Employer admits that Union-represented employees previously performed the type of camera operation work used at the "Fun Fearless Life" event. However, it argues that those prior occurrences are not dispositive evidence that the Union has jurisdiction over the disputed work because they involved the Union directly informing theater lessees that they had to hire Union-represented employees to perform that work. The Employer in those prior instances did not make work

⁶ According to the Technical Director, it is common practice to hire Union-represented shadow workers when there are legitimate jurisdictional concerns. For example, if an outside entity leasing the Koch Theater insists on bringing its own staff to perform work clearly within the Union's work jurisdiction, the Employer will hire the corresponding number of Union-represented workers, who assist with the work if their help is needed.

assignments pursuant to any obligation it had under a collective-bargaining agreement. Therefore, the Union cannot establish a valid contract-based defense regarding the Section 8(b)(4)(ii)(D) allegation.

The Employer also admits that the footage captured for the “Fun Fearless Life” event was not broadcast or streamed outside the Koch Theater, which the Union contends is the very definition of closed-circuit projection work and within its jurisdiction as set forth in the parties’ collective-bargaining agreement. However, the Employer maintains that Article 14(a) of the agreement, which refers to closed-circuit projection work, does not apply to the disputed work because that provision is limited to the maintenance and operation of a 24-hour stationary camera used to film the stage for projection onto closed-circuit televisions located in Lincoln Center’s offices.

The Employer also argues that it had no control over the camera operation work for the event. Rather, Live Ventures, Production Glue, and/or Clark Media exercised complete control over that work. Moreover, the Employer notes that Clark Media provided the cameras, and the Union has no jurisdiction over equipment provided by an outside entity.

Finally, regarding the Section 8(b)(6) allegation, the Employer argues, as stated above, that the Union did not have a contractual right to claim the disputed work and, but for the Union’s threat to picket the event, it would not have hired the three shadow workers. The Technical Director also asserts that the three shadow camera operators did not work at all on November 7, or during the event on November 8 and 9, but two of them did work during the load-out on November 9.

B. The Union Asserts that the Camera Operator Work Performed During the “Fun Fearless Life” Event Was Within Its Jurisdiction.

The Union argues that, contrary to the Employer’s view, the jurisdiction language in the parties’ contract is broad and that any excluded work is explicitly listed. Moreover, the camera operation work is not excluded and it falls under language found in Article 2(b), which refers to the operation of “optical and mechanical devices, electronic and all related circuitry . . . and all lighting, visual, sound or other effects of all kinds.” The Union argues further, in contrast to the Employer, that Article 14(a) does apply and that it extends to all closed-circuit camera work and not solely the 24-hour stationary camera used to monitor the stage.

The Union also maintains that its actions had a lawful, work preservation objective because the documentary evidence shows that the disputed work always has been within the Union’s jurisdiction. The Union contends further that when an outside camera operator was used, it was at the request of a particular licensee and did not result in the displacement of Union-represented employees.

Finally, regarding the Section 8(b)(6) allegation, the Union states that the shadow employees were ready and able to work, and did perform whatever work was available. It also states that when an outside entity insists on using workers not represented by the Union to perform work within its jurisdiction, the Union has insisted that its members not be displaced. Thus, Union-represented employees are still hired to cover work that will also be performed by non-Union employees, and they perform as much work as possible, as was the case here. The Union also contends, contrary to the Employer, that the three shadow camera operators performed work, including handling, carrying, and assisting with cameras, running cables, and operating cameras when a Clark Media camera operator returned late from lunch.

ACTION

We conclude that the Union's economic threats against the Employer would not give rise to a jurisdictional dispute within the meaning of Section 8(b)(4)(ii)(D) because the Employer is not a neutral party to the dispute. Rather, the Employer created the dispute by allowing an outside entity to hire camera operators not represented by the Union to film an event, even though it had the right to prevent such hiring, when Union-represented employees have traditionally performed the disputed work. We also conclude that the Union did not violate Section 8(b)(6) by demanding that the Employer hire three shadow workers because they either performed work or were ready to perform work.

I. The Union Did Not Violate Section 8(b)(4)(ii)(D).

Section 8(b)(4)(ii)(D) makes it an unfair labor practice for a labor organization to threaten, coerce, or restrain any person engaged in commerce with the object of forcing or requiring any employer to assign particular work to employees belonging to one labor organization rather than employees belonging to another labor organization.⁷ A jurisdictional dispute arises within the meaning of Sections 8(b)(4)(ii)(D) and 10(k) when an employer is "an obviously neutral party thrust into a work dispute that it did not cause."⁸ The purpose of these provisions "is to relieve the

⁷ See, e.g., *NLRB v. Plasterers' Local 79*, 404 U.S. 116, 123 (1971); *Plasterers' Local 200 (Standard Drywall)*, 357 NLRB No. 160, slip op. at 3 (2011), *enfd.*, 547 Fed. Appx. 809 (9th Cir. 2013).

⁸ *Mine Workers (Bronzite Mining)*, 280 NLRB 587, 590 (1986) (Section 10(k) determination proper where dispute was between competing groups of employer's employees rather than between union and employer over interpretation of contract).

employer of the burden of choosing between employee-groups that are competing for the assignment of work” where the employer is “perfectly willing to assign [the] work to either group of employees if the other will just let him alone.”⁹

An employer may not rely on Sections 8(b)(4)(ii)(D) and 10(k) if the union’s action is designed to pressure the employer to preserve for its members work that they have traditionally performed.¹⁰ Thus, where an employer created the dispute by unilaterally assigning work to non-unit employees in breach of a collective-bargaining agreement, Sections 8(b)(4)(ii)(D) and 10(k) do not apply.¹¹ A union is engaged in a lawful work-preservation dispute, rather than a jurisdictional dispute, when the employees it represents have traditionally performed the disputed work and the targeted employer has the right to control (i.e., assign) that work.¹² Because the right to assign the work is typically evident in cases where a targeted employer is alleged to have created the dispute, the primary issue is whether the employees represented by the respondent-union performed the work before the events giving rise to the charge.¹³ If so, a union’s actions to reclaim that work does not violate Section 8(b)(4)(ii)(D).¹⁴

⁹ *Longshoremen ILWU Local 62-B v. NLRB (Alaska Timber Corp.)*, 781 F.2d 919, 922, 924 (D.C. Cir. 1986).

¹⁰ *Id.* at 925-26 (ILWU did not violate 8(b)(4)(ii)(D) by picketing to protest loss of work opportunities resulting from employer’s decision to stop subcontracting to company that employed ILWU members and to start using its own employees instead). *See also Seafarers (Recon Refractory & Reconstruction)*, 339 NLRB 825, 827-28 (2003), *aff’d*, 424 F.3d 980 (9th Cir. 2005); *Teamsters Local 107 (Safeway Stores)*, 134 NLRB 1320, 1322-23 (1961) (finding no jurisdictional dispute where union picketed employer in “attempt to retrieve the jobs of its members”).

¹¹ *Teamsters Local 107 (Safeway Stores)*, 134 NLRB at 1323 (distinguishing a jurisdictional dispute cognizable under 8(b)(4)(D) and 10(k) from a situation in which “the employer by his unilateral action created the dispute”).

¹² *See, e.g., NLRB v. Longshoremen (ILA)*, 447 U.S. 490, 504-05 (1980).

¹³ *See, e.g., Teamsters Local 174 (Airborne Express)*, 340 NLRB 137, 139 (2003); *Teamsters Local 107 (Reber-Friel Co.)*, 336 NLRB 518, 521 (2001).

¹⁴ *See also Seafarers (Recon Refractory & Construction)*, 339 NLRB at 827-28 (“Where a dispute is fundamentally one between an employer and a union, and concerns the union’s attempt merely to preserve the work it previously had performed, the Board

For example, in *Teamsters Local 578 (USCP-Wesco)*,¹⁵ Safeway reassigned the work of restocking shelves to USCP-Wesco in breach of the no-subcontracting clause in its collective-bargaining agreement with the UFCW. After the reassignment, the UFCW filed grievances against Safeway that resulted in favorable arbitration awards. In response, the Teamsters, who represented USPC-Wesco's employees, threatened to picket if the work was assigned back to the UFCW-represented employees. Based on that threat, Section 8(b)(4)(ii)(D) charges were filed against the Teamsters. Recognizing that although the dispute may literally have fallen within the terms of Sections 8(b)(ii)(4)(D) and 10(k) because Safeway was subject to competing claims for the work and one party had threatened to picket to prevent a change in work assignment, the Board nevertheless found that the real dispute was a matter of work preservation. It stated that "Section 8(b)(4)(D) was not designed to authorize the Board to arbitrate disputes between an employer and a union, particularly regarding the union's 'attempt to retrieve jobs' of employees the employer chose to supplant by reallocating their work to others."¹⁶ Safeway was not an "innocent" employer because it had "created [the] dispute by breaching its collective-bargaining agreement with UFCW and could have ended it by cancelling its subcontract with Wesco. Safeway voluntarily entered into an agreement with UFCW, which included restrictions on subcontracting unit work."¹⁷ The Board therefore concluded that Safeway could not use the Board's proceedings to resolve a dispute of its own making.

As in *USCP-Wesco*, the dispute here is not between two groups of employees. Rather, this is a contractual dispute between the Employer and the Union based on the Employer's alleged breach of the parties' collective-bargaining agreement by permitting an outside entity to assign the camera work for the "Fun Fearless Life" event to employees not represented by the Union. The dispute arose when the Employer, through its license agreement with Live Ventures, allowed Clark Media to bring in non-Union operators to perform work that Union-represented employees have traditionally performed at the Koch Theater. Thus, the Employer is not an innocent employer caught between conflicting demands.

will not afford the employer the use of a 10(k) proceeding to resolve a dispute of its own making.").

¹⁵ *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818, 820 (1985), *aff'd*, 827 F.2d 581 (9th Cir. 1987).

¹⁶ *Id.* at 820-21.

¹⁷ *Id.* at 823.

Moreover, as with *USCP-Wesco*, the real dispute here is a matter of work preservation. The Union demonstrated that between 2011 and 2014, its members consistently performed the type of work that Clark Media's non-Union camera operators were hired to perform. Specifically, they repeatedly had performed closed-circuit camera work in the theater. Indeed, at the Ernst & Young event in November 2013, Union-represented employees operated cameras to project the image of lecturers onto large screens onstage, i.e., the same work involved at the "Fun Fearless Life" event. The Employer concedes this work history, and we find no merit in its argument that this work history should not be considered because the Union, rather than the Employer, directly contacted the outside entities leasing the theater and required them to hire Union-represented camera operators to perform the disputed work. Union-represented employees performed this type of work over a four-year period.¹⁸

We also reject the Employer's defenses because it always has possessed the right to assign the disputed camera work and, thus, it was not a neutral party to this dispute. It is clear from the license agreement between the Employer and Live Ventures that the Employer had the right to demand that licensees and their agents hire Union-represented employees to perform the camera operation work. That agreement states that "[n]either party shall do anything to put the other in violation of any union contract or labor agreement. . . ." In short, the Employer could have required Live Ventures and its subcontractors, i.e., Production Glue and Clark Media, to use Union-represented camera operators as a condition of leasing the Koch Theater. Thus, there is no merit to its position that it was a neutral employer caught in a jurisdictional dispute. Again, the Employer created the dispute by allowing Live Ventures and its agent, Clark Media, to assign the disputed work to non-Union employees. Moreover, these facts establish that the Employer had the right to control the camera work for prior events as well. Thus, prior acquiescence by the Employer to the Union directly informing outside entities leasing the theater that they had to use Union-represented camera operators does not in any manner undermine the fact that the Union traditionally performed the disputed work.

Accordingly, because we conclude that the Union had a work preservation dispute with the Employer, its threat to picket the Employer did not give rise to a jurisdictional dispute within the meaning of Section 8(b)(4)(ii)(D) of the Act.

¹⁸ On a total of three occasions between 2013 and 2014, an outside entity leasing the theater insisted on using non-Union camera operators to perform similar work. On each occasion, the Employer hired an equivalent number of Union-represented shadow employees. That response confirms the Employer's recognition that Union-represented employees have traditionally performed this work.

II. The Union Did Not Violate Section 8(b)(6).

Section 8(b)(6) prohibits so-called “featherbedding,” which involves unions creating an employment relationship where represented “employees furnish no consideration whatsoever for their employment, and their entire compensation represents payment for nonproductive time; in fact, their employment relationship is created and maintained solely for the purpose of forcing payment of wages for services not to be performed.”¹⁹ “The Supreme Court has made it eminently clear that the proscriptions of Section 8(b)(6) are very narrow.”²⁰ In its most recent decision on this provision, the Board stated that the “touchstone for any analysis of an 8(b)(6) allegation is whether any work is performed or contemplated, regardless of whether the employer needs or desires it.”²¹ Moreover, “the presence of a collective-bargaining agreement [is] not relevant to a determination of whether Section 8(b)(6) ha[s] been violated . . . the only purpose of the section [is] to prevent payment for no work.”²²

In *Teamsters Local 282 (TDX Constr. Corp.)*, a property developer hired TDX to supervise a construction project and make sure that it was completed in accordance with the applicable contracts.²³ TDX did not perform construction work, receive deliveries, direct trucks delivering materials, or unload trucks. The union asked TDX to hire an onsite steward to haul and move materials on the site, coordinate deliveries, coordinate safety efforts relating to the Teamsters onsite, and otherwise work at TDX’s direction. After TDX refused, the union picketed the site until one of the contractors on the project hired an onsite steward.²⁴ The Board held that the union’s picketing did not violate Section 8(b)(6) because its demand that TDX hire an onsite steward did not fall within the kind of featherbedding prohibited by the statute where the demand was an offer for actual work to be performed.²⁵ Indeed, the onsite

¹⁹ *International Typographical Union (American Newspaper Publishers Assn.)*, 86 NLRB 951, 960 (1949), *enfd. in relevant part*, 193 F.2d 782, 801-02 (7th Cir. 1952), *aff’d*, 345 U.S. 100, 110 (1953).

²⁰ *Teamsters Local 282 (TDX Constr. Corp.)*, 332 NLRB 922, 922 (2000).

²¹ *Id.* at 924.

²² *Id.* at 923.

²³ *Id.* at 922.

²⁴ *Id.* at 922.

²⁵ *Id.* at 925.

steward performed the specified duties when he worked for the other contractor. The Board held that, although TDX did not want or need the services of an onsite steward because it was supervising construction rather than performing that type of work, the demand did not require TDX to hire an employee who would do nothing. Nor did the union's demand that TDX hire an onsite steward run afoul of TDX's contract with the property developer, and the union did not ask TDX to hire an employee with skills not relevant to TDX's business activities.²⁶

Applying the above precedent, we conclude that the Union did not violate Section 8(b)(6) by demanding that the Employer hire three shadow camera operators for the "Fun Fearless Life" event. As set forth above, it is irrelevant that the Employer may not have desired or needed these employees. On the morning of November 7, the three shadow workers from the Union arrived at the theater ready, willing, and able to perform any available work subject to the Employer's direction. The Union did not ask the Employer to hire employees who would not perform any services or lacked the skills relevant to the Employer's business. The Union also did not ask the Employer to violate any of its contractual obligations related to the event. Because the Union always contemplated the employees working, the Technical Director's assertion that three employees did not perform any services on November 7 and 8 is irrelevant. Indeed, she admits that it is common practice for the Employer to hire shadow workers from the Union in situations where the Employer agrees that an outside entity is encroaching on the Union's work jurisdiction, and that those employees are ready to work if needed. Moreover, the Union disputes the Technical Director's assertion and maintains that the three employees handled and carried cameras, assisted with camera work, ran cables, and operated one of the audience cameras when a Clark Media employee returned late from lunch. The Technical Director also admits that two shadow workers assisted with load-out on November 9. In short, the Union did not demand that the Employer pay employees for doing nothing or for work unrelated to the event. Therefore, we conclude that the Union did not violate Section 8(b)(6).

Based on the preceding analysis, the Region should dismiss the charge allegations, absent withdrawal.

/s/
B.J.K.

²⁶ *Id.* (noting that although TDX was merely supervising the contractors on the construction project, nothing in its contract with the property developer prohibited it from performing construction work).