

ELLEN GREENSTONE
ROTHNER, SEGALL & GREENSTONE
510 South Marengo Avenue
Pasadena, California 91101-3115
Telephone: (626) 796-7555
Facsimile: (626) 577-0124
E-mail: egreenstone@rsglabor.com

Attorneys for LOCAL 40, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

LOCAL 40, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO,

CASE No. 31-CD-149956

Charged Party,

and

NBCUNIVERSAL MEDIA, LLC,

Charging Party,

and

UNIVERSAL CITY STUDIOS, LLC,

Employer,

and

NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS, LOCAL 53,

Party-In-Interest.

**POST-HEARING BRIEF TO THE NATIONAL LABOR RELATIONS BOARD
BY CHARGED PARTY LOCAL 40, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO**

TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF RELEVANT FACTS	1
A. The Parties	1
B. The Disputed Work	1
C. The Work Site: Universal Studios Lower Lot Tom Brokaw News Center	1
D. The Burbank Facility	4
II. ARGUMENT	6
A. § 10(k) PREREQUISITES	6
B. § 10(k) FACTORS	8
1. Employer Preference	8
2. Efficiency and Economy of Operations	9
3. Certifications and Collective Bargaining Agreements	12
4. Relative Skills and Training	16
5. Area and Industry Practice	21
a. Employer practice	21
b. Area and industry practice	22
III. CONCLUSION	24

TABLE OF AUTHORITIES

Page

Cases

Laborers' Int.'l. Union of N. Am. (Surianello General Concrete Contractor, Inc.),
351 NLRB 210 (2007) 21

Laborers Local 320 (Northwest Natural Gas),
330 NLRB 594 (2000) 21

Laborers Local 731 (Slattery Associates),
298 NLRB 787 (1990) 24

Motion Picture Machine Operators Locals 27 and 48 (CBS, Inc.),
227 NLRB 142 (1976) 13

Southwest Regional Council of Carpenters (Standard Drywall),
346 NLRB 478 (2006) 12

Structural Steel and Bridge Painters Local Union 806 (Carabie Corp.),
356 NLRB No. 123 (2011) 12, 13

Statutes

Natural Labor Relations Act,
§ 2(2) 1
§ 2(5) 1
§ 2(6) 1
§ 2(7) 1
§ 8(b)(4)(D) 1, 6, 8
§ 10(k) *passim*

Other Authorities

Higgins, *The Developing Labor Law*,
BNA, Sixth Ed. 2012 8

Charged Party in the above-captioned proceeding under Section 10(k) of the National Labor Relations Act, LOCAL 40, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO (“IBEW Local 40”) files its Post-Hearing Brief to the Board.

I. STATEMENT OF RELEVANT FACTS

A. The Parties

The parties stipulated that Charged Party IBEW Local 40 and Party-In-Interest NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS, LOCAL 53 (“NABET Local 53”) are both labor organizations within the meaning of § 2(5) of the Act and that Employer UNIVERSAL CITY STUDIOS, LLC (“Universal Studios”) is an employer within the meaning of §§ 2(6) and (7), and also §§ 2(2) and 8(b)(4)(D) of the Act. Exhibit B-2, ¶¶ 4, 5.¹

B. The Disputed Work

The parties stipulated that the disputed work that is the subject of this proceeding is “the installation, operation, maintenance[sic] and repair of the heating, ventilation and air condition[ing] system, and the electrical and plumbing systems plant maintenance at the Tom Brokaw News Center in Universal City, California.” Exhibit B-2, ¶ 6. The classification of employee performing the work for the Employer is “tower engineer.”

C. The Work Site: Universal Studios Lower Lot Tom Brokaw News Center

The Employer, Universal City Studios, LLC, maintains the buildings, structures, and grounds of the lower lot area at Universal City, an area utilized for the making of motion and

¹ Exhibits are cited as “B” for Board Exhibits; “J” for Joint Exhibits; “E” for Employer Universal Studios’ Exhibits; “IBEW” for Charged Party IBEW Local 40’s Exhibits; and “NABET” for Party-In- Interest NABET Local 53’s Exhibits.

television pictures and related production work. TR 36:3-10, 38:4-8.² The upper lot is the Universal Studios Hollywood theme park. TR 38:16-21. Universal Studios has been successively owned by Music Corporation of America (“MCA”); Panasonic; Seagram’s; Vivendi; and NBC, which was owned by General Electric (“GE”) and is now owned by Comcast. TR 184:13-22. Throughout these ownerships, IBEW Local 40 has represented employees at Universal Studios and has represented employees in the motion picture industry within its jurisdiction generally since 1923. TR 184:25-185:3.

In 2012 and 2013, a building on the lower lot which originally housed Universal Studios’s film lab and then was occupied for some 50 years by the Technicolor Company, a separate company, was renovated to house the KNBC local news operation and network news operation formerly located on NBC’s Burbank lot. TR 42:12-22, 42:25-43:6, 187:6-9. IBEW Local 40-represented employees of Universal Studios performed HVAC and electrical maintenance work in the Technicolor building during the time Technicolor occupied the building, and their services were charged back to Universal Studios. TR186:16-188:9. As renovated in 2012/2013, the building was called the Universal City Broadcast Center or UCBC and then became known as the Tom Brokaw News Center or BNC. TR 42:25-43:9.³ Universal Studios began moving equipment in about September 2013. The renovations were completed at the end of 2013. TR 46:7-11.

² Citations to the transcript of the hearing are noted as “TR” followed by the page(s) and line(s) of testimony cited separated by a colon.

³ Although referred to as a single building, the BNC occupies adjoining buildings 1126 and 2120 in the upper left corner on Exhibit E-3, a site plan of Universal Studios lower lot. TR 103:19-23, 104:8-12, 19-21.

The Employer, Universal City Studios, LLC, is a member of the Alliance of Motion Picture and Television Producers (“AMPTP”), a multi-employer bargaining agent, which has a current collective bargaining agreement with IBEW Local 40. TR 36:15-21, 37:10-23; J-2, p. 169. IBEW Local 40 has, for many decades [TR 41:1-7], represented employees on the lower lot. The current collective bargaining agreement, the AMPTP/IBEW Local 40 Agreement, is effective August 1, 2012, through July 31, 2015. Exhibit J-2.

IBEW Local 40 represents two groups of employees within its jurisdiction: signatory contractors to the Los Angeles chapter of the National Electrical Contractors Association (“NECA”) who perform work on motion picture studio lots⁴ and signatory studios to the AMPTP/IBEW Local 40 Agreement, which covers on-production and off-production employees and facilities employees, including electrical, HVAC, post-production sound technicians, special effects technicians, and stage and sound managers. TR 183:9-184:8.

Under the AMPTP/IBEW Local 40 Agreement, IBEW Local 40 represents Universal Studios’ tower engineers, the disputed classification. TR 41:1-4. Tower engineers perform HVAC (heating, ventilation, and air conditioning), electrical and some plumbing work and other general maintenance work. TR 40:1-12. IBEW Local 40 Business Manager/Financial Secretary William Brinkmeyer testified that there have been tower engineers on the lower lot since before 1985 when he started working for Universal Studios. TR 179:19-22, 185:18-186:10. Also, on the lower lot, under the AMPTP/IBEW Local 40 Agreement, IBEW Local 40 represents employees who perform electrical, air conditioning, and high voltage maintenance. TR 41:8-20.

⁴ For example, IBEW Local 40-represented electricians who performed the renovations on the BNC, although not the HVAC which was performed by Steamfitters Local 250-represented employees. TR 188:10-25.

NABET-represented employees have never performed the maintenance work in the BNC building. NABET did not perform maintenance work when the building was occupied by Technicolor. TR 45:19-22. In fact, Universal Studios' Director of Labor Relations, Mark Higginbotham testified, "We have not had an L contract employee work on the Universal lot." TR 70:7-23.

D. The Burbank Facility

NABET Local 53 is party to a master collective bargaining agreement with NBCUniversal Media, LLC ("NBCU"), effective from 2009 to 2015. Exhibit J-1. NABET-CWA's Master Agreement with NBCU covers engineering (the "A contract" within the Master Agreement), news writers (the "M contract"), and air conditioning (the "L contract"). TR 232:5-8.⁵ The Master Agreement is a multi-city, multi-local contract, covering employees in New York, Chicago, Washington, and Los Angeles and their respective local unions. TR 242:8-24. Employees covered by the NABET-CWA/NBCU Master Agreement worked, and some continue to work, at the Burbank lot, located on Alameda Avenue, Burbank, California. TR 66:1-11.

Prior to 2013, employees of NBCU represented by NABET Local 53 under the L contract worked at the Burbank lot. NABET Local 53 President Steven Ross testified that, between building services and air conditioning, there were 15 to 18 employees under the L contract at the Burbank lot. TR 233:13-19. He stated that NABET had represented the L contract unit on the Burbank facility under the master agreement since at least 1975. TR 249:6-16. The Burbank lot was sold to a non-Universal-related entity in about 2007, and NBC Universal leased it back and

⁵ The NABET-CWA NBCU Master Agreement, 2009-2015 is Exhibit J-1, and the "L" contract within the Master Agreement is found at pages 144-148.

continued to operate. TR 74:21-22, 80:9-16, 259:3-7. NABET Local 53-represented employees continued to perform maintenance work under the L contract. TR 259:22-24. In or after 2010, NABET was notified that the new owner of the Burbank facility had other individuals performing air conditioning work. TR 260:5-10. At some point in 2012, the purchaser informed NBC Universal that it no longer wished to use NBC Universal employees to perform the HVAC and maintenance work and wanted to use its own subcontractor. As a result, the NABET-represented maintenance employees were laid off by the end of 2012. TR 75:4-19, 81:1-16, TR 260:23-261:3.⁶

NABET-represented technicians in other classifications supporting television broadcast productions moved to the BNC. TR 66:12-67:12. Ross testified that at the BNC NABET represents employees covered by the A contract, including editors, transmission engineers, maintenance engineers, photographers, as well, apparently, as some employees covered by the M contract, news writers. TR 266:23-267:3, 267:17-23. Telemundo shares facilities with KNBC and is located on the Universal Studios lot. TR 222:22-23. NABET Local 53 represents the Telemundo control room employees, automated production control, directors, audio employees, field photographers, and editors. TR 222:13-19. NABET also still represents employees working on the Burbank lot, including employees working on the show Access Hollywood and in a field shop which houses all of the network and local trucks, satellites, and vans and out of which the field photographers work. TR 275:24-277:11.

⁶ The parties stipulated that a grievance filed by NABET Local 53 over the layoff of L contract employees at the Burbank facility was settled December 26, 2012, and that the layoff was scheduled to be implemented December 28, 2012. TR 301:13-302:13. As a result of the settlement, after the end of 2012, all of the NABET-represented L contract employees at the Burbank lot were laid off. TR 302:15-18.

At the time of the move, there were no HVAC maintenance (“L contract”) employees employed. TR 67:13-19. Since the beginning of January 2013 to date, no NABET-represented employees have performed HVAC maintenance at the Burbank facility. TR 81:17-82:3, 277:12-278:1, 289:11-13.

II. ARGUMENT

A. § 10(k) PREREQUISITES

In a proceeding under § 10(k), the prerequisites which must be established in order for the Board to consider an award of work are: 1) competing claims to the work, 2) reasonable cause to believe that § 8(b)(4)(D) has been violated, and 3) no agreed-upon method for voluntary resolution of the dispute. Here, the parties stipulated to all three prerequisites. Exhibit B-2.

The parties stipulated that “IBEW Local 40 and NABET Local 53 both claim the work that is in dispute.” Exhibit B-2, ¶ 8.

In early August 2013, Universal Studios’ Director of Labor Relations Higginbotham called NABET Local 53 President Ross and advised him that the maintenance work in the BNC would be performed by IBEW Local 40-represented employees “because it’s part of the facility of Universal City Studios.” TR 44:10-45:2. Higginbotham called Ross, anticipating an issue, because NABET had filed a grievance, later settled in 2012, after NBC sold the Burbank lot and the owner informed NBC that it no longer wanted to use NBC’s maintenance employees, who were represented by NABET. TR 50:13-51:7.⁷ Ross disagreed, stating that the work should fall

⁷ Higginbotham testified that he did not contact Ross under § 8.9(c) of the NABET-CWA/NBCU Master Agreement because the move was not a change in operation. TR 72:18-73:6; Exhibit J-1, page 20-21. Section 8.9(c) provides for employer notification to the union in advance of the operational use of new technical equipment or a significant change in any established method of operation and affords the union the opportunity to grieve if the change

under NABET's L contract. TR 45:2-3. NABET Local 53 filed a grievance dated August 13, 2013, against National Broadcasting Company - Universal asserting that the employer had assigned members of another Union to perform work within its exclusive jurisdiction, specifically work covered by the "L" contract of the NABET-CWA NBCU Master Agreement, 2009-2015, "including air conditioning and plant maintenance work at the newly constructed UCBC Building located on the Universal lot within Los Angeles. The UCBC Building will be a facility 'of the Company in Los Angeles' under the terms of the NABET-CWA/NBCU Master Agreement" Exhibit J-3(b); see also TR 48:5-13, 268:14-269:1. NABET Local 53 referred its grievance to arbitration by a letter dated October 9, 2014. Exhibit J-3(a); TR 48:15-25, 269:10-11.

Higginbotham also called IBEW Local 40's Brinkmeyer to confirm that IBEW claimed the work. TR 52:4-17. By a letter dated August 30, 2013, IBEW Local 40 claimed jurisdiction over the maintenance work at the Universal Broadcast Center. Exhibit E-1; see also TR 53:3-22. In September 2013, the Employer assigned the HVAC, electrical, and related maintenance work to IBEW Local 40. TR 53:23-54:5.

In response to NABET Local 53's reported active pursuit of its grievance concerning assignment of the work to arbitration, in a letter dated March 26, 2015, IBEW Local 40 asserted its jurisdiction over the heating, ventilation, and air conditioning systems work and threatened to "take action, including economic action, such as picketing, to compel NBC Universal to reassign the work back to workers represented by IBEW" should NABET be assigned the work. Exhibit J-4. The parties stipulated that, since about September 2013, the Employer has assigned the

imposes a significant increase in workload or physical, mental, or nervous strain. While the provision describes an arbitrator's authority to mitigate the change, nothing in the provision affords the arbitrator authority to compel the assignment of work.

disputed work to IBEW Local 40 and that on or about March 26, 2015, IBEW Local 40 sent its letter “stating that there would be economic action, such as picketing, if NABET Local 53 or any other labor organization continued to claim or was assigned the disputed work.” Exhibit B-2, ¶ 10. This stipulation establishes reasonable cause to believe that § 8(b)(4)(D) has been violated.

The parties also stipulated that “[t]here is no agreed-on method for voluntary adjustments of the work dispute in question here which would bind all parties.” Exhibit B-2, ¶ 9.

Based on the documentary evidence and the parties’ stipulations, the prerequisites to a proceeding under § 10(k) have been met.

B. § 10(k) FACTORS

Analysis of the § 10(k) factors fully supports and compels the conclusion that the proper assignment of the disputed work is to IBEW Local 40. *None* of the § 10(k) factors favors NABET Local 53, and *none* is inconclusive.

1. Employer Preference

Higginbotham testified that the Employer’s preferred assignment was to have Universal Studios’ tower engineers perform the disputed work [TR 54:6-12] for the following reasons: an existing support group comprised of IBEW Local 40-represented employees; the ability to call IBEW Local 40 for qualified employees; and IBEW Local 40’s training programs [TR 56:2-22]. The Board places primary reliance on the employer’s preference where it is supported by the other § 10(k) factors and, in the vast majority of cases, awards the work consistent with employer preference. See Higgins, *The Developing Labor Law*, BNA, Sixth Ed. 2012, ch. 24.II.D. Here, the § 10(k) factors overwhelmingly support assignment of the disputed work to IBEW Local 40, consistent with the Employer’s preference.

2. Efficiency and Economy of Operations

The reasons for Universal Studios' preference for IBEW Local 40 illustrate the efficiency and economy factor of the § 10(k) analysis.

Higginbotham testified that there was already a "support group" of trained and qualified employees who could be cross-utilized by calling IBEW Local 40 for technicians if the Employer needed additional help, and that the Employer did not have that option with NABET. TR 56:5-14. NABET does not have a hiring hall, in contrast to IBEW Local 40. TR 56:25-57:7.

Higginbotham testified that Universal Studios and other studios utilize IBEW Local 40's hiring hall and that Universal Studios does so on a regular basis. TR 58:24-60:1. Brent Whaley, Director of Facilities Engineering [TR 92:23] responsible for electricians, HVAC mechanics, tower engineers, plumbers, painters, prop makers, and laborers [TR 93:21-94:9; see Exhibit E-2] testified that employees from IBEW Local 40 are trained in their areas of expertise. "There is a vast pool to draw from, from the Local 40, and we have, for generations, used Local 40 to supply the tower engineers for our facility. I've been with the company for 28 years, and it precedes me as an employee that there were tower engineers working there." TR 115:1-9.

Using tower engineers, who are also in the same general area as the BNC, is a more efficient and effective way of running the operation. TR 56:20-22.⁸ The Employer's tower engineers have two IBEW Local 40-represented foremen, one for all front lot buildings and one for the BNC, Kevin Watson. TR 95:23-96:12. There are eleven tower engineers, including the two foremen. TR 97:20-24. The Employer also has an IBEW Local 40-represented HVAC

⁸ Tower engineers work on the lower lot in buildings 1220, 1280 (LRW or "the tower"), 1320, 1360, 2311, 2160 (Carl Laemmle), 2128 (Abbot & Costello), 9227 (day care), and 9128 (office building Sidney J. Sheinberg). TR 106:20-108:11, 110:4-6.

department, with nine employees, including an apprentice in IBEW Local 40's apprenticeship program, who work on the buildings where the tower engineers do not work, including sound stages, bungalows, and other areas not considered front lot, and an IBEW Local 40-represented electrical department, with 20 to 50 employees (depending on the number of projects), including three IBEW Local 40 apprentices, who perform high voltage, construction, and service and maintenance electrical work. TR 97:2-19, 98:16-99:21.

Tower engineers are interchanged. TR 115:10-13. Tower engineers assigned to the BNC work three shifts during the week, and a tower engineer from the 1280 building fills two weekend shifts on Saturdays and Sundays at the BNC. TR 141:18-23, 153:19-154:4. In addition, Watson works Monday through Friday, 6:00 a.m. to 5:00 p.m. TR 154:5-10.

Conversely, tower engineers assigned to the BNC do other work on the lot, including digital air conditioning, air conditioning in the data centers outside of the BNC, and on a recent occasion plumbing work on a water leak in another building. TR 115:16-19, 141:3-8, 143:17-21, 144:1-145:13, 145:18-146:15. Tower engineers at the BNC are available to do this work because, of the buildings serviced by the tower engineers, only the BNC is has tower engineer coverage 24 hours a day, seven days a week. TR 147:4-15. Between 9:00 p.m. and 6:00 a.m., the BNC tower engineers are the only HVAC and electrical employees on duty; the other departments do not work during those hours. TR 163:1-4. Whaley testified that the 24-hour coverage is vital. TR 147:16-21. The tower engineer at the BNC is the only tower engineer ordinarily on the lot on weekends and takes calls every weekend involving other buildings served by tower engineers. TR 176:18-177:10.

Watson testified that, "pretty much the automation department for the entire lot is run out

of BNC, because the five of us there have the most knowledge of the automation, and that automation is all around the lot. So basically, any call that the HVAC department can't handle along those lines, we handle it." TR 158:7-11. Automation refers to the Siemens system which controls the air conditioning and monitors lighting, irrigation pumps, wet sensors, and data centers. TR 158:13-20.⁹ Watson had some 15 years of experience with the Siemens automation system being installed or used on the lower lot before he started at the BNC. TR 172:20-173:4. Data center calls predominantly require the use of air conditioning knowledge related to cooling data equipment and require immediate response capability. TR 161:8-16. BNC automation calls have also included installing, programing, and calibrating zoned air conditioning. TR 161:19-162:8. Watson testified that other systems, including card readers for security put in by Climatech, are standardized on the lot, so that, by working on that equipment in the BNC, the BNC tower engineers would be able to work on the same kind of equipment elsewhere on the lot. TR 163:23-164:19.

Tenant improvement or specialized electrician work, performed by electrical department employees, may occur in buildings maintained by tower engineers. TR 129:9-22, 165:1-6 (build-out of distribution panels in BNC). Also, employees from the electrical department supplemented the BNC tower engineers during the 2014 Olympics. TR 156:21-157:15.

By Watson's testimony, interchange occurs more than once a month, weekly for automation assistance alone, even when other regularly scheduled employees are working. TR 126:24-127:4, 158:21-23, 163:5-14.

⁹ Data centers are located in building numbers 1360, 1280, 2160, 3153, 2315, and 9128. TR 160:2-161:6.

Whaley testified that, if he had been told he needed to use NABET-represented employees in the BNC, he would not have known what to do and would have had to investigate what they do, what training they have, what certification they have, and even how to contact them. TR 118:22-120:2. By contrast, Whaley stated, “I already know the talent I have currently and the talent I’ve hired through Local IBEW and understand what they are sending me” and that it would be less efficient to have NABET-represented employees in the BNC. TR 121:15-122:4. Brinkmeyer testified that, if NABET-represented workers were working at the BNC, Local 40’s position would be that they could not provide HVAC or electrical maintenance services to any of the other facilities on the Universal Studios lot. TR 209:1-13.

Plainly, the high and specific level of the BNC tower engineers’ expertise and Universal Studios’ ability to cross-utilize them establishes the efficiency and economy of the assignment to IBEW Local 40. NABET Local 53 specified during the hearing that its claim to disputed work is limited to the work performed by the tower engineers at the BNC [TR 134:13-135:7] – essentially an artificial carve-out of a very small island of unknown and likely lesser skilled HVAC maintenance employees. Even assuming NABET Local 53 could provide individuals to work at the BNC, they could not be utilized to the extent the Employer uses the IBEW Local 40-represented current employees.¹⁰

3. Certifications and Collective Bargaining Agreements

There is no evidence of Board certification concerning the employees involved in this

¹⁰ NABET Local 53 suggested an argument that its members would be more economical because of their contractual wage scales. The Board does not rely on differing rates of pay in determining a jurisdictional dispute. *Structural Steel and Bridge Painters Local Union 806 (Carabie Corp.)*, 356 NLRB No. 123, n.6 (2011); *Southwest Regional Council of Carpenters (Standard Drywall)*, 346 NLRB 478, 483 (2006).

matter. The parties stipulated that the Employer is not failing to conform to a Board order or certification determining the bargaining representative for the employees performing the disputed work. Exhibit B-2, ¶ 7.

As to collective bargaining agreements, the work here is claimed under two separate collective bargaining agreements with two different employers. Universal Studios' Higginbotham testified, succinctly, "[W]e have two signatory entities, one that signed off to the NBC agreement and one that signed off on the IBEW Local 40 agreement. And these two separate signatory entities are not signed to the other one."

"In jurisdictional disputes, the relevant collective-bargaining agreement is the one negotiated with the employer who has ultimate control over the assignment of the disputed work." *Structural Steel and Bridge Painters Local Union 806 (Carabie Corp.)*, 356 NLRB No. 123, sl.op.3 (2011). This is true even where both unions' collective bargaining agreements arguably cover the disputed work; the relevant collective bargaining agreement is the agreement negotiated with the employer that has the ultimate control over the assignment of work. *Motion Picture Machine Operators Locals 27 and 48 (CBS, Inc.)*, 227 NLRB 142, 144 (1976) (one employer's collective bargaining agreement covered geographic area, and other employer's agreement covered venue; relevant contract was contract with (first) employer in control of manner and means of work). Here, Universal Studios made, and thereby evidently controlled, the assignment of work.

IBEW Local 40 Business Manager/Financial Secretary Brinkmeyer testified that the AMPTP/IBEW Local 40 Agreement covers tower engineers on the Universal Studios lower lot. TR 181:3-20. The scope of work is set forth in Paragraph 81 [Exhibit J-2, pages 164-166] and

includes in subsection (h) the “installation . . . and maintenance . . . of permanent or portable refrigeration and air conditioning systems and heating systems . . .” From Whaley’s and Watson’s testimony, discussed above, clearly the BNC tower engineers perform more than just the HVAC work within the scope of work, including electrical work (see Paragraph 81, subsections (a) through (f)). Because Universal Studios controlled the assignment of the disputed work and because the disputed work is covered by the relevant contract, the AMPTP/IBEW Local 40 Agreement, this § 10(k) factor conclusively favors assignment of the work to employees represented by IBEW Local 40.

NABET Local 53 raised several contentions about its agreement, none of which constitutes a relevant jurisdictional-assignment consideration.

NABET Local 53 asserted that the Employer Universal City Studios, LLC, and the entity with which it has a collective bargaining agreement, NBCUniversal Media, LLC, are joint employers and/or a single employer [TR 32:21-33:7]. However, NABET but did not offer evidence to prove this claim. The preamble to the NABET-CWA/NBCU Master Agreement is limited to the specific contracting/employing entity; it is:

NBCUniversal Media, LLC, as the owner and operator of those television and radio stations, television and radio network operations and other entities and operations that were covered by the 1983-1987 NABET-NBC Master Agreement¹¹ and news bureaus set forth in Stipulation 19, but only to the extent that such stations, network operations, other entities and operations and news bureaus continue to be owned and operated by NBCUniversal Media, LLC

¹¹ 1983-1987 precedes 2004, when General Electric purchased Universal Studios. Before 2004, the Universal lot was not affiliated with NBC or the Burbank lot. TR 278:2-17.

Moreover, when NABET-CWA and its employer did bargain language related to a name change in 2006, that agreement was also narrowly drawn: “The change in name from the National Broadcasting Company, Inc. to NBC Universal neither **expands** nor **contracts** the scope of, or the jurisdiction under, the Master Agreement.” Exhibit J-5(a); bold in original.

(hereinafter called the 'Company').

Exhibit J-1. There is no evidence in the record in this case as to the relationship between the two entities. The fact that both are somehow related to NBC is an insufficient basis for argument that they are joint employers or a single employer or that NBCU had any control over the assignment of HVAC and electrical work once the BNC located to the Universal Studios lot.

NABET's argument that Sideletter 61 of the NABET-CWA/NBCU Master Agreement compels the assignment of work is similarly unsupported. The NABET-CWA/NBCU Master Agreement contains a Sideletter 61, which states:

This will confirm the Company will not assert, based solely on a change of location from the Company's Burbank facility to another location within the Los Angeles metropolitan area of an entity(s) and/or operation(s) covered under the Preamble to the Master Agreement, that such entity(s) and/or operation(s) is no longer covered under such Preamble.

Exhibit J-1, page 289. Sideletter 61 came into the NABET-CWA Master Agreement in the contract preceding the 2009-2015 agreement, 2006-2009. TR 243:25-244:5; J-5(b). Ross testified that there was no discussion of Sideletter 61 or physically moving to another location from Burbank during the 2009 bargaining. TR 244:9-245:2, 248:8-16. Ross claimed that NABET learned of the move from the Burbank facility after the 2009 agreement was ratified [TR 253:14-17], although he acknowledged speculation, rumor, and concern among employees between 2007 and 2009 that the Burbank operations might move to the Universal lot [TR 285:24-286:3, 286:21-287:4]. The 2009 contract was not finalized, by ratification, until February 10, 2012, after the parties reached a memorandum of agreement on January 12, 2012. TR 246:20-247:5. Asked by NABET's counsel why NABET put Sideletter 61 in the agreement, Ross asserted that, "if they are going to move the facility or whatever, that we would still – the work

would still follow wherever they go.” TR 270:24-271:2. Ross conceded that Sideletter 61 does not expressly state that the work would follow a relocation. TR 280:7-19.

By its terms, like the preamble, Sideletter 61 is an agreement specifically limited to NBCUniversal Media, LLC. That Company simply agrees not to make an assertion – which it has not made here. Sideletter 61 is not a successorship clause. It says nothing about assignment of work, and it does not give NBCUniversal Media, LLC control over assignment of work in a change of location. Indeed, the evidence indicates that NBCUniversal Media, LLC did not even control assignment of L contract work before the relocation, when the purchaser of the Burbank lot decided it no longer wanted to have NABET-represented employees perform HVAC maintenance. Sideletter 61 is an irrelevant side issue.

Because Universal Studios controlled the assignment of the disputed work, the relevant AMPTP/IBEW Local 40 Agreement applies, and this § 10(k) factor favors the IBEW Local 40 assignment. No terms of the NABET-CWA/NBCU Master Agreement nor evidence override this outcome.

4 Relative Skills and Training

Tower engineers’ duties include operation and maintenance of HVAC systems, chillers, boilers, electrical, and mechanical systems, and light plumbing. TR 108:18-109:5. The Employer has different types of refrigeration systems, including a central plant utilizing chillers that feed several locations. TR 109:11-23. The tower engineers are responsible for the central plant. TR 109:24-110:1.

Particular tower engineers are regularly assigned to the BNC. TR 112:20-113:2. From the outset, Facilities Engineering Director Brent Whaley assigned Kevin Watson, who was

working in the HVAC department, and Lyle Lundeen, who was in the electrical department, both in IBEW Local 40's bargaining unit, to the BNC. Neither had previously been a tower engineer. TR 113:3-114:6. The rest of the BNC tower engineers came from IBEW Local 40's hiring hall. TR 114:7-12. All are journeymen. TR 130:13-24. All five employees were hired before the end of 2013. TR 140:5-14.

Watson, Chief Engineer (foreman) of the BNC has 17 years with Universal Studios, 15 in the HVAC department and two in the BNC. TR 149:24-150:6, 150:19-20. Watson is a tower engineer represented by IBEW Local 40. TR 151:2-8. In the HVAC department, he was also represented by IBEW Local 40. TR 151:9-11. His duties are to keep the BNC running, electrically, air conditioning-wise, plumbing, generators, and the automatic switching system to generator power. TR 150:7-15. Watson spent a five-year apprenticeship with Refrigeration and Steamfitters Union, Local 250, and during that time worked for York International, a chiller manufacturer, as a master technician working to start up, maintain, service, and overhaul chillers for clients. He has taken Trane centrifugal chiller and other classes. TR 151:12-23, 152:7-14. He is EPA-certified to handle refrigerants which he used for the HVAC department and uses at the BNC to certify the equipment annually, and he has a C-20 contractor's license. TR 152:21-24, 153:12-13. Whaley testified that an EPA certification is required for handling refrigerants and that, at least, the other tower engineer foreman has such certification. TR 117:17-25.

Of the other tower engineers at BNC, one ran (i.e., did Watson's job) the Universal Amphitheatre for 15 years; the Amphitheatre was closing at the time the BNC was opening. TR 155:13-24. The other engineers have electrician, tower engineer, HVAC, and construction backgrounds and work as a team. TR 154:24-156:11, 174:12-22.

The HVAC system in the BNC is a digital automation system that requires specialized training. TR 132:20-133:1. Whaley testified that some of the IBEW Local 40 electricians had training in the system from the vendor, Siemens, and some were trained by the leadership within IBEW Local 40 training their co-workers. TR 133:19-134:9.

Employees in the Universal Studios' separate HVAC department perform the same HVAC duties as tower engineers, for buildings to which tower engineers are not assigned, and they also supply additional manpower if tower engineers need assistance. TR 124:9-24. Employees in Universal Studios' separate electrical department perform high voltage electrical construction and maintenance and tenant improvement work, including building out office space and installing outlets, lighting, conduit, and telecommunications, fiber, and other supporting equipment, managing the installation of substations, and servicing and maintaining the systems. TR 122:21-124:4.

IBEW Local 40 operates a hiring hall to which foremen call in to ask who is available and/or put in a manpower request. The union dispatches from three books: Book 1 lists individuals who have six months experience in the motion picture studios; book 2 lists traveling members from other locals; and book 3 lists unrepresented individuals. Individuals on books 2 and 3 can work their way onto book 1. TR 182:17-183:8. The AMPTP/IBEW Local 40 agreement requires the employer to give preference to employees with six months' experience in the job classifications covered by the agreement and to call the union when additional help is needed. Exhibit J-2, Para. 68(c), page 138. The AMPTP/IBEW Local 40 agreement allows employers to hire from any source if IBEW Local 40 cannot supply qualified employees. Exhibit J-2, Para. 68(e), page 138. However, such employees become part of IBEW Local 40's

bargaining unit and subject to the Agreement's union security clause. TR 206:1-23.

IBEW Local 40 has an industry training program that trains apprentices in both electrical and HVAC, from which Universal Studios has often used apprentices over the years. TR 56:15-20. IBEW Local 40 and NECA operate a five-year apprenticeship program out of a school next to Local 40's union hall for NECA apprentices and motion picture apprentices. TR 189:1-12, 191:1-5. An industry organization, the Contract Services Administration Trust Fund ("CSATF"), which performs educational functions for AMPTP members pays for some of the instructors in the motion picture apprenticeship program and provide a mechanism for referring out apprentices. TR 63:23-64:8, 203:2-11. CSATF gives an OSHA safety training program, administers apprenticeship programs, and administers rosters of member unions, except for IBEW Local 40, which does not have a roster but, rather, dispatches from its books. TR 204:24-205:9.

For HVAC, IBEW Local 40 sends apprentices to LA Trade Tech, a community college, for a four-year program. TR 189:10-23. In this program, apprentices take two courses per semester from LA Trade Tech, which includes automated air conditioning systems, and work 40 hours per week for on-the-job training. TR 190:7-10, 204:2-6.

Apprenticeship standards set out in Exhibits IBEW-1(a), (b) and (c) and IBEW-2 represent the apprenticeship standards for IBEW Local 40's apprenticeship programs for journeymen wiremen, HV air conditioning mechanic in the motion picture industry, for the NECA apprenticeship. TR 192:8-24, 193:16-23. The NECA standards have been approved by the federal and State governments, and the motion picture standards have been approved by the State. TR 193:24-194:9.

By contrast, the NABET-CWA/NBCU Master Agreement merely requires employees in

the classification of Watch Engineer-Electrician to have a valid Electric Maintenance license from the City of Burbank. TR 271:16-272:7; Exhibit J-1, page 145. NABET Local 53 President Ross testified that, between building services and air conditioning, there were 15 to 18 former employees under the L contract at the Burbank lot [TR 233:13-19] (as compared to six successfully performing the work at the BNC). He stated that NABET had represented the L contract unit at the Burbank facility since at least 1975 (prior to their layoff at the end of 2012). TR 249:6-16. He did not know if any were journeymen. TR :303:12-19.

NABET Local 53 does not operate an apprenticeship school or program for either HVAC or electrician employees. TR 307:18-25. Neither Local 53 nor NABET's national union or sector has an apprenticeship program from which to refer apprentices. TR 308: 1-13. NABET Local 53 also does not have a hiring hall or referral service for referring HVAC or electrical employees to an employer. TR 335:16-19.

On the factor of relative skills, the evidence overwhelmingly favors assignment of the work to employees represented by IBEW Local 40. Both Universal Studios and IBEW Local 40 presented evidence that IBEW Local 40-represented employees have the training and a history of successfully performing the disputed work. IBEW Local 40-represented employees have been successfully performing the disputed work since mid-2013 – nearly two years.

NABET Local 53 did not present any evidence regarding the skills and training of the former employees who performed HVAC and building maintenance work at the Burbank facility prior to 2013 nor any evidence of whether or not such employees or any others it represents possess the skill and training to perform the work at the renovated BNC. NABET Local 53-represented employees have not performed the disputed work since December 2012 – two and a

half years ago.

Thus, the relative skills and training factors favor awarding the disputed work to IBEW Local 40-represented employees. *Laborers' Int.'l. Union of N. Am. (Surianello General Concrete Contractor, Inc.)*, 351 NLRB 210, 213 (2007); see also *Laborers Local 320 (Northwest Natural Gas)*, 330 NLRB 594, 597 (2000) (award of work favored employees receiving formal union-provided training courses and on-the-job training and successfully performing the work).

5. Area and Industry Practice

a. Employer practice

In 2008 and 2009, a building on Universal Studios' lower lot was rebuilt as Stage One for The Tonight Show with Conan O'Brien. Before that, The Tonight Show with Jay Leno was broadcast from the Burbank lot. TR 83:16-84:6. When the production moved to the Universal Studios lot, although NABET-represented broadcast technicians continued to perform work on the production on the Universal Studios lot, IBEW Local 40-represented tower engineers performed the HVAC and electrical maintenance work at the new Stage One. TR 84:11-85:4. NABET did not make any claim nor file a grievance for the maintenance work. TR 85:5-8.¹²

"The Agency" does promotional pieces for insertion in upcoming news broadcasts. The Agency operated from the Burbank lot till it moved to a building on the Universal Studios lower lot about two or three years ago. NABET-represented broadcast technicians continued to perform work on The Agency productions on the Universal Studios lot. TR 85:15-86:25. However, IBEW Local 40-represented employees perform the HVAC and electrical maintenance

¹² Stage One occupies buildings 2220 and 2230 on the site plan. TR 106:10-11, Exhibit E-3.

work at The Agency facility on the Universal Studios lot. TR 87:2-13. NABET did not make any claim nor file a grievance for the HVAC and electrical work but did file a grievance for work of building equipment racks. TR 87:14-24.

Other broadcast productions on stages on the Universal Studios lower lot use NABET-represented broadcast technicians, including Food Fighters, Hollywood Game Night, and a Howie Mandel Show. HVAC and electrical maintenance in the buildings housing those stages is performed by IBEW Local 40-represented employees. NABET has not claimed or filed grievances for this work. TR 89:1-90:9.

The evidence establishes that NABET Local 53 has *never* before claimed L contract work on the Universal Studios lot in a relocation or otherwise. The Employer's consistent practice of using its own employees under its collective bargaining agreement with IBEW Local 40 on its own property to perform HVAC and electrical maintenance conclusively favors IBEW Local 40.

b. Area and industry practice

Of the employers signatory to the AMPTP/IBEW Local 40 Agreement, a significant number have physical plants where IBEW Local 40 represents electricians or HVAC mechanics: CBA Studios, Inc.; Paramount Pictures Corp.; Fox Studios; Sony Pictures; Universal City Studios LLC; Warner Bros. Studio; Walt Disney Pictures; and Sunset Bronson. TR 208:1-24. IBEW Local 40 represents employees doing all of the maintenance at the CBS Radford facility and all of the electrical work at Fox in support of broadcast functions. TR 210:16-211:4. Thus, IBEW Local 40 performs work of the type disputed here generally for motion picture studios in the Los Angeles area. In addition, Brinkmeyer testified that employees covered by the agreement may travel outside of the Los Angeles area, if the production starts here and moves, for example, to

the east coast. TR 194:21-195:5.

NABET Local 53 President Steven Ross testified that Local 53 has about eight or nine separate contracts with different employers in Los Angeles County and a newly organized unit in Las Vegas, Nevada. TR 219:20-21, 220:2-3. The contracts include: NBC, a Network Engineering Operations contract with Fox, a contract with Fox-owned local television stations KTDV and KCOP, a contract with Telemundo local channel 52, a contract with Univision station KMEX, and a contract with MundoFox affiliate KWHY. TR 220:7-14. With respect to these facilities, NABET Local 53 represents engineers, cameramen, maintenance engineers, editors and studio, camera, sound, and post-production employees. TR 229:16-25 (Fox), 230:1-2 (KTTV), 230:12-20 (KWHY). Unlike IBEW Local 40's uniform industry contract, NABET Local 53's contracts, including its NBCU contract, are individual.

Of those, Ross testified that NABET Local 53 represents air conditioning and building services employees at Fox Network Center under a separate agreement entered into in 2013. TR 224:12-17; NABET-1. Ross stated that the facility is a stand-alone facility with both television and motion picture related productions. An outside contractor does new installations of HVAC, but NABET Local 53 represents the 15 employees performing HVAC maintenance. TR 227:18-228:13, 229:5-8. NABET Local 53 did not present evidence of any collective bargaining agreements currently covering HVAC, electrical, or building maintenance, other than this single agreement. He admitted that the agreement with Fox does not have anything to do with NBC. TR 288:2-14.

The area and industry practice factor strongly favors the assignment to IBEW Local 40. IBEW Local 40 widely performs HVAC and electrical maintenance work under an industry

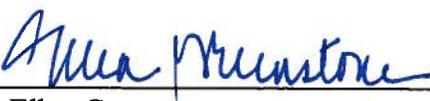
contract. NABET Local 53 apparently has a single contract under which employees are performing HVAC and building services work on a non-exclusive basis. *Laborers Local 731 (Slattery Associates)*, 298 NLRB 787, 790 (1990) (holding that area practice factor favored union that had performed work of the kind in dispute for numerous contractors in the greater New York City area, while there was evidence of only one specific contractor in the same area who had used other union to perform the disputed work). Taken as a whole, the evidence establishes that work of the type disputed here is core work of IBEW Local 40's motion picture jurisdiction and that NABET Local 53's core work encompasses television network broadcast technicians, with HVAC and building maintenance tangential to its core representation.

III. CONCLUSION

In this case, as conclusively shown by the facts discussed above, *all* of the § 10(k) factors favor the continued assignment of the disputed work to IBEW Local 40. None of the factors favors a disruptive assignment of work to NABET Local 53-represented employees of another employer under a different collective bargaining agreement who cannot be integrated into the performance of similar work on Universal Studios' lower lot. None of the factors is even inconclusive.

Dated: May 29, 2015

ELLEN GREENSTONE
ROTHNER, SEGALL & GREENSTONE

By  _____
Ellen Greenstone

Attorneys for LOCAL 40, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO

CERTIFICATE OF SERVICE

NLRB Case No. 31-CD-14956

I hereby certify that on the May 29, 2015, a copy of the foregoing **POST-HEARING BRIEF TO THE NATIONAL LABOR RELATIONS BOARD BY CHARGED PARTY LOCAL 40, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO** was filed electronically with the Executive Secretary of the National Labor Relations Board and served by electronic mail and mail on the parties listed below.

G. Peter Clark, Esq.
Kauff, Mcguire & Margolis, LLP
950 Third Avenue, 14th Floor
New York, New York 10002
E-mail: clark@kmm.com

Lewis N. Levy, Esq.
Levy, Ford & Wallach
3619 Motor Avenue
Los Angeles, California 90034
E-mail: llevy@lflawyers.com

*Counsel for Charging Party/Employer
NBCUniversal Media, LLC and Universal City
Studios, LLC*

*Counsel for Party-in-Interest National
Association of Broadcast
Employees & Technicians, Local 53*

Mori Rubin, Regional Director
National Labor Relations Board, Region 31
11500 West Olympic Blvd., Suite 600
Los Angeles, CA 90064.
E-mail: mori.rubin@nlrb.gov

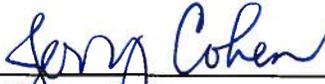
(By Mail)

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice I place all envelopes to be mailed in a location in my office specifically designated for mail. The mail then would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

(By Electronic Mail)

I caused such documents described herein to be sent to the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 29, 2015, in Pasadena, California.



JERRY COHEN