

NOT TO BE INCLUDED
IN BOUND VOLUMES

PHMc
Cleveland, OH

UNITED STATES OF AMERICA
THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18

and

Case 08-CD-135243

NERONE & SONS, INC.

and

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 310
Party-in-Interest

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 310
Charged Party;

and

Case 08-CD-135244

NERONE & SONS, INC.

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18
Party-in-Interest

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18

and

Case 08-CD-143412

R.G. SMITH COMPANY, INC.

and

LABORERS' INTERNATIONAL UNION OF

NORTH AMERICA, LOCAL 310
Party-in-Interest

**LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 310**

and

Case 08-CD-143415

R.G. SMITH COMPANY, INC.

and

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18**
Party-in-Interest

ORDER DENYING MOTION FOR RECONSIDERATION

On October 1, 2015, the National Labor Relations Board issued a Decision and Determination of Dispute in this proceeding, finding that employees represented by Laborers' International Union of North America, Local 310 (Laborers) are entitled to perform the disputed work of operating forklifts, bobcats, and skid steers and granting an areawide award of that work.¹ International Union of Operating Engineers, Local 18 (Operating Engineers) filed a timely Motion for Reconsideration.

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

In its motion, Operating Engineers argues that the Board erred in rejecting Operating Engineers' contention that this proceeding involved a contractual work-preservation issue rather than a jurisdictional dispute. Operating Engineers argues that

¹ 363 NLRB No. 19.

the Board failed to properly determine the scope of the bargaining unit and whether the disputed work has been historically performed by Operating Engineers. However, Operating Engineers has proffered no evidence contradicting the Board's findings that both Laborers' and Operating Engineers' collective-bargaining agreements cover the disputed work and that employees represented by Laborers have historically performed the disputed work for the Employers involved in this case.² Nor has it raised any substantial argument not previously considered by the Board.

Having duly considered the matter, we find that Operating Engineers' motion fails to establish "extraordinary circumstances" warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

Accordingly, we shall deny the motion.

IT IS ORDERED, therefore, that the motion is denied.

Dated, Washington, D.C., December 28, 2015.

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

² The Board has previously declined to rely on evidence of Operating Engineers' participation in multi-employer agreements to support a finding that its grievances have a work preservation objective. Instead, the Board looked to whether the employers at issue in each case in fact assigned the disputed work to employees represented by Operating Engineers and whether those assignments occurred on more than a sporadic basis. See *International Union of Operating Engineers, Local 18 (Donley's Inc.)*, 360 NLRB No. 113, slip op at 4-5 (2014), motion for reconsideration denied 2014 WL 4352171. In the underlying proceeding, the Board found that the Employers assigned forklift, bobcat, and skid steer work to employees represented by Operating Engineers on very rare occasions when a Laborers-represented employee was not available to perform the work.

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD