

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

LOCAL UNION OF THE INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL,
ORNAMENTAL, AND REINFORCING
IRONWORKERS, Charged Party – Labor
Organization

and

R.G. SMITH COMPANY, INC., Charging Party –
Employer,

and

THE INDIANA/KENTUCKY/OHIO REGIONAL
COUNCIL OF CARPENTERS, UNITED
BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, Party in Interest,

and

SHEET METAL WORKERS' LOCAL UNION NO. 33,
AKRON DISTRICT a/w INTERNATIONAL
ASSOCIATION OF SHEET METAL, AIR, RAIL, AND
TRANSPORTATION UNION, Party in Interest.

SHEET METAL WORKERS' LOCAL UNION NO. 33,
AKRON DISTRICT a/w INTERNATIONAL
ASSOCIATION OF SHEET METAL, AIR, RAIL, AND
TRANSPORTATION UNION, Charged Party – Labor
Organization

and

R.G. SMITH COMPANY, INC., Charging Party –
Employer,

Case No. 08-CD-159904

Case No. 08-CD-160179

and

THE INDIANA/KENTUCKY/OHIO REGIONAL
COUNCIL OF CARPENTERS, UNITED
BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, Party in Interest,

and

LOCAL UNION OF THE INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL,
ORNAMENTAL, AND REINFORCING
IRONWORKERS, Party in Interest.

**POST-HEARING BRIEF ON BEHALF OF
CHARGING PARTY EMPLOYER R.G. SMITH COMPANY, INC.**

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I. OVERVIEW

This case presents a straightforward work jurisdiction dispute under Section 10(k) of the National Labor Relations Act ("NLRA"). Historically, Sheet Metal Workers and Ironworkers have performed mill maintenance and equipment setting work for RG Smith at its industrial job sites throughout Northern Ohio. This is an arrangement with which RG Smith and these two unions are satisfied. However, the Millwrights have recently embarked upon a campaign to take from the Ironworkers and Sheet Metal Workers this work, thereby seeking to expand their work jurisdiction and acquire for themselves work that their trade has not done in the past. The Millwrights' latest effort in this direction was a grievance over work at a job site in Mansfield, Ohio, followed by the threat of a grievance at another site.

Fearing their work might be reassigned to Millwrights, the Ironworkers and Sheet Metal Workers threatened picketing and other activities designed to force RG Smith to continue to assign mill maintenance and equipment setting work to their members. Meanwhile, there is no mutually-binding mechanism by which this dispute can be resolved outside of the Section 10(k) process. Accordingly, the Charging Party Employer R.G. Smith Company, Inc. ("RG Smith") now seeks from the Board a determination that it may continue to assign mill maintenance and equipment setting work as it has for over a decade: to Ironworkers and Sheet Metal Workers.

II. JURISDICTION

The Parties stipulated (Tr. 11) that RG Smith is an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act and is subject to the jurisdiction of the NLRB based on the following facts:

RG Smith is an Ohio corporation, based in Canton, Ohio, that employs approximately 250 people. (Tr. 11, 24). RG Smith self-performs industrial contracting work in Northern Ohio. (Tr. 24).

The Parties further stipulated that the Ironworkers and Sheet Metal Workers are labor organizations within the meaning of Section 2(5) of the Act. (Tr.12). The Millwrights are likewise a labor organization within the meaning of Section 2(5) of the Act. (Tr. 25-26). The geographical jurisdiction of the Ironworkers covers the Counties of Stark, Wayne, Tuscarawas, Coshocton, Carroll, Holmes, Richland, and Ashland, Ohio, and portions of the Counties of Columbiana, Huron, Mahoning, Medina, Portage, and Summit, Ohio. (Tr. 26, CPEX 1, at 1).¹ The geographical jurisdiction of the Sheet Metal Workers covers the Counties of Ashland, Carroll, Coshocton, Crawford, Holmes, Medina, Portage, Richland, Stark, Summit, Tuscarawas, and Wayne, Ohio. (Tr. 28, CPEX 2, at 1). The geographical jurisdiction of the Millwrights' collective bargaining agreement with RG Smith covers the Counties of Ashland, Ashtabula, Belmont, Carroll, Columbiana, Coshocton, Cuyahoga, Erie, Geauga, Harrison, Holmes, Huron, Jefferson, Knox, Lake, Lorain, Mahoning, Medina, Monroe, Morrow, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, Wayne, Hancock, and Marshall, Ohio. (Tr. 30, CPEX 3, at 1-2).

III. THE DISPUTE

A. The Unions Dispute RG Smith's Assignment of Mill Maintenance and Equipment Setting Work.

The work in dispute is the performance of mill maintenance and equipment setting in Northern Ohio and, specifically:

¹ Record Exhibits are referenced herein by the following abbreviations: "CPEX __" refers to Charging Party Exhibits; "IWEX __" refers to Ironworkers Exhibits; "SMWEX __" refers to Sheet Metal Workers Exhibits; and "FEX __" refers to the Formal Exhibits. References to the official transcript are made by the abbreviation "Tr. __."

Water Cooled Elbow Replacement work for [RG Smith's] AK Steel project in Mansfield, Ohio, including miscellaneous fabrication, rigging, off loading, setting, aligning, bolting, and miscellaneous welding of all Water Cooled Elbow sections, and associated items with the Water Cooled Elbows. AND South Descale Pump Replacement work for [RG Smith's] AK Steel project in Mansfield, Ohio, including miscellaneous fabrication, rigging, off loading, setting, aligning and bolting of South Descale Pump, and all associated items with the South Descale Pump. (Tr. 13, FEX 1(g)).

Mill maintenance consists of repair and installation of manufacturing machinery in industrial settings, including steel refineries, food production facilities, and other industrial facilities. (Tr. 31, 64-65). Tasks associated with mill maintenance work include off-loading, aligning, bolting, welding, cutting, rigging, and setting such machinery in order to repair it or incorporate it into the assembly process within an industrial facility. (Id. 31-32, 64-65). Equipment setting is often a sub-set of mill maintenance that consists of placing equipment into industrial facilities; it also involves off-loading, aligning, rigging, and setting machinery and equipment. (Id. 32, 65).

In this case, the specific mill maintenance and equipment setting work at issue was performed at the AK Steel mill located in Mansfield, Ohio during a ten-day plant shut-down in 2015, and consisted of approximately 30 mill maintenance jobs at the AK Steel mill. (Tr. 75-76).²

² The description of work appearing in the Region's Notice of Hearing relates to two of the more than 30 jobs RG Smith performed at the AK Steel shut-down. It was for only these two jobs that RG Smith issued "work assignment letters." (Tr. 95-96; SMWEX O1-P1; IWEX 1-2). As explained in further detail in the next section, RG Smith's typical practice is to issue work assignment letters only when it deems necessary clarification of a work assignment. In the case of the AK Steel shut-down, RG Smith issued work assignment letters on the two jobs on which it used a composite crew of not only Sheet Metal Workers and Ironworkers (its usual practice), but also Pipefitters, who were needed to accomplish the two specific jobs reflected in the assignment letters. (Id.). In fact, the Millwrights' threat of grievance associated with the AK Steel job was not limited to the specific tasks reflected in those assignment letter but, instead, related to all mill maintenance and equipment setting work at the AK Steel job. (Tr. 47, 77-79; CPEX 12). Thus, while the parties have stipulated that the "work in dispute" incorporates the specific tasks detailed in the two work assignment letters issued by RG Smith on the AK Steel job, the actual work in dispute at the AK Steel plant in 2015 is broader, and encompasses all mill maintenance and equipment setting work at the AK Steel plant in 2015.

B. The Employer's Current Practice Regarding Mill Maintenance and Equipment Setting Work Is to Assign Such Work to Composite Crews of Sheet Metal Workers and Ironworkers.

RG Smith is signatory to collective bargaining agreements with the Ironworkers, Sheet Metal Workers, and Millwrights. (Tr. 25-30; CPEX 1-3).

RG Smith performs extensive mill maintenance and equipment setting work at numerous job sites, including the AK Steel job site in Mansfield, Ohio. (Tr. 31-32, 64-65, 75-76). It is undisputed that RG Smith accomplishes this work using Ironworkers and Sheet Metal Workers, sometimes in composite crews. (Tr. 32-33, 65-66, 104). In fact, this has been the practice for as long as anyone can remember, dating back as far as the 1990's. (Id.). During this time, with only extremely rare exceptions, the Millwrights have never performed mill maintenance or equipment setting work on RG Smith job sites in Northern Ohio. (Tr. 34-36, 65, 104-109).

C. The Millwrights Begin an Area-Wide Campaign to Capture Mill Maintenance and Equipment Setting Work from Sheet Metal Workers and Ironworkers.

The Millwrights first approached RG Smith concerning the assignment of mill maintenance and equipment setting work in 2010 or 2011. Specifically, Millwright representative Dan Sivertson approached RG Smith Chief Operating Officer Geoff Nicely and RG Smith Division Manager, Mansfield Division, Rick Reece, requesting RG Smith begin to use Millwrights members to perform mill maintenance and equipment setting work in the plants in and around Mansfield, Ohio. (Tr. 34-35, 67-68). Ultimately, Reece gave in and agreed to hire a local Mansfield member of the Millwrights at the next plant shut-down at AK Steel in Mansfield, Ohio. However, when Reece attempted to contact the individual, he received no response. Thus, Reece never ultimately hired

any Millwright to perform mill maintenance and equipment setting work for the Mansfield Division of RG Smith. (Id.).

In approximately 2011 or 2012, the Millwrights again approached RG Smith, this time asking to have their members assigned to mill maintenance and equipment setting work on the forge press at the Timken Plant in Canton, Ohio (the "Forge Press Job"), which fell under RG Smith's Industrial Division, headed by Mike Black. (Tr. 35, 104). The Millwrights' performance and productivity were so poor that, pursuant to the request of Timken Steel, RG Smith's customer, the Millwrights had to be removed from the Forge Press Job. (Id.).³

D. The Millwrights File a Grievance Over Mill Maintenance and Equipment Setting Work at Arcelormittal and Threaten the Same at AK Steel.

In June 2015, the Millwrights ceased asking to be assigned to mill maintenance and equipment setting work and, instead, demanded it, issuing a grievance under their collective bargaining agreement with RG Smith over the assignment of mill maintenance and equipment setting work at the Arcelormittal facility in Shelby, Ohio (the

³ RG Smith used Millwrights on one other occasion, on a caster project also at Timken Steel in 2013 (the "Caster Job"). (Tr. 35-37, 104-108, 118-120). This work assignment was performed under the National Maintenance Agreement ("NMA") and, therefore, is not immediately relevant to the work dispute before the Board in this Case. However, it is relevant insofar as the Millwrights' performance is concerned. First, while the Ironworkers and Sheet Metal Workers regularly work together in composite crews on mill maintenance and equipment setting work, the Millwrights were unable to work effectively in composite crews with the Ironworkers (even though that work assignment has been expressly specified under the work assignment process provided by the NMA). (Tr. 105-106). Second, after the Millwrights and Ironworkers were separated into single-trade work crews, it quickly became evident that the efficiency of the Ironworkers when compared with the Millwrights was "day and night." (Tr. 106). Indeed, on more than one occasion Black witnessed firsthand a millwright spend 90 minutes setting up a leveling instrument, while he regularly sees Ironworkers set up the same instrument in approximately ten minutes. (Tr. 107-108). Third, the Millwrights proved unreliable, preferring to quit the job early despite the urgent need to complete the work before the conclusion of Timken's plant shut-down. (Tr. 108). Ultimately, RG Smith was forced to complete the job using Ironworkers because all of the Millwrights had stopped coming to work. (Id.). Finally, the Millwright's on-the-job injury rate was far above RG Smith's experience and expectations. (Tr. 36-37, 118-120). Specifically, RG Smith is required by many of its customers to maintain a total recordable injury rating of four or less. Overall, RG Smith is typically able to maintain a rating of 4.6. However, on the Caster Job, the Millwrights' injury rating was no less than 29.3, which jeopardizes RG Smith's continued client relationships.

"Arcelormittal Grievance"). (Tr. 37-47, 68-75; CPEX 4). In particular, Sivertson alleged in the Arcelormittal Grievance that RG Smith had violated its collective bargaining agreement by assigning to the Ironworkers and Sheet Metal Workers mill maintenance and equipment setting work including:

[U]nloading, hoisting, rigging, skidding, moving, dismantling, aligning, erecting, assembling, repairing, maintenance, and adjusting of all structures, processing areas, either under cover, under ground, or elsewhere, required to process material, handle, manufacture or service, be it powered or receiving power manually, by steam, gas, electricity, gasoline, diesel, nuclear, solar, water, air or chemically, and in industries such as and including, which are identified for the purpose of description, but not limited to, the following: woodworking plants; canning industries; steel mills; coffee roasting plants; paper and pulp; cellophane; stone crushing; gravel and sand washing and handling; refineries; grain storage and handling; asphalt plants; sewage disposal; water plants; laundries; bakeries; mixing plants; can, bottle, and plastic bag plants; textile mills; paint mills; breweries; milk processing plants; power plants; installation of control rods and equipment in reactors; and installation of mechanical equipment in rocket missile bases, launchers, launching gantry, floating bases, hydraulic escape doors and any and all component parts thereto, either assembled, semi-assembled or disassembled. The installation of, but not limited to, the following: setting-up of all engines, motors, generators, air compressors, fans, pumps, scales, hoppers, conveyors of all types, sizes, and their supports; escalators; man lifts; moving sidewalks; hoists; dumb waiters; all types of feeding machinery; amusement devices; mechanical pin setters and spotters in bowling alleys; refrigeration equipment; and the installation of all types of equipment necessary and required to process material either in the manufacturing or servicing. The handling and installation of pulleys, gears, sheaves, fly wheels, air and vacuum drives, worm drives and gear drives directly or indirectly coupled to motors, belts, chains, screws, legs, boots, guards, booth tanks, all bin valves, turn heads and indicators, shafting, bearings, cable sprockets, cutting all key seats in new and old work, troughs, chippers, filters, calendars, rolls, winders, rewinders, slitters, cutters, wrapping machines, blowers, forging machines, rams, hydraulic or otherwise, planning, extruder, ball, dust collectors, equipment in meat packing plants, splicing of ropes and cables. The laying-out, fabrication and installation of protection equipment including machinery guards, making and setting of templates for machinery, fabrication of bolts, nuts, pans, drilling of holes for any equipment which the Millwrights install regardless of materials; all welding and burning regardless of type, fabrication of all lines, hose or tubing used in lubricating machinery

installed by Millwrights; grinding, cleaning, servicing and any machine work necessary for any part of any equipment installed by the Millwrights; and the break-in and trial run of any equipment or machinery installed by the Millwrights. It is agreed the Millwrights shall use the layout tools and optic equipment necessary to perform their work.

(CPEX 4 at 4). (See also CPEX 3). This work had been performed by the Ironworkers and Sheet Metal Workers at the Arcelormittal job. (Tr. 68-69; CPEX 10, 11).

The Arcelormittal Grievance proceeded to the Step Four grievance process, which entailed a panel determination before a panel of employer and union representatives at the offices of the Construction Employer Association. (Tr. 42-45, 70-71). However, the panel reached no determination because, after an initial discussion of each party's position concerning the proper determination of the work jurisdiction, the Millwrights asked that the proceeding be adjourned until such time as they were able to have counsel present. (Id.). Rather than reconvening Step Four of the Arcelormittal Grievance process, the Millwrights instead requested a settlement meeting with RG Smith. (Tr. 45-47). That settlement meeting, which was held in early October 2015, resulted in the Millwrights' agreement to dismiss the grievance, paired with their express statement that they were not, thereby, disclaiming the mill maintenance and equipment setting work at issue. (Tr. 46).

In early September 2015, RG Smith performed more than 30 jobs for AK Steel in Mansfield, Ohio during a ten-day plant shut-down, during which AK Steel shuts down its operations so that the plant's equipment can be worked on (i.e., so that mill maintenance and equipment setting work can be performed). (Tr. 75-76, 95-96).

In the middle of the job, Sivertson sent Reece an email in which he accused RG Smith of assigning "Millwright work" to "the wrong craft yet again" and threatening to "file another grievance" unless RG Smith assigned mill maintenance and equipment setting

work to Millwrights (the "Threat Email"). (Tr. 47, 77-79; CPEX 12). The "Threat Email" was not, like the Arcelormittal Grievance, withdrawn as a result of any severance, but neither has it, as yet, resulted in any actual grievance. (Id.).

E. The Ironworkers and Sheet Metal Workers Make Threats Related to the Disputed Work.

By September, 2015, it was apparent that the Millwrights were in the midst of an area-wide campaign to claim mill maintenance and equipment setting from the Ironworkers and Sheet Metal Workers. As a result, Nicely sent correspondence to William Sherer of Ironworkers Local 550 and Jerry Durieux of Sheet Metal Workers Local 33 notifying them that it might become necessary to reassign mill maintenance and equipment setting work to the Millwrights. (Tr. 48-54; CPEX 6, 8). In response, Sherer sent a letter informing Nicely that, if RG Smith were to reassign mill maintenance and equipment setting work to Millwrights or to participate in any proceeding that may result in the loss of such work:

[W]e will engage in whatever activity we deem appropriate to protect our work jurisdiction. This will include withholding the referral of ironworkers to your company as well as engaging in picketing and other publicity activity protesting the assignment of that work.

(CPEX 9). Durieux replied on behalf of the Sheet Metal Workers that:

If any work is assigned or redirected to [the Millwrights] that results in lost hours, we will engage in any activity we deem necessary to protect our work. This will include; grievances and withholding of the referral of Sheet Metal Workers.

(CPEX 7).

F. The Present Charges

As a result of the threats to by the Ironworkers and Sheet Metal Workers over the assignment of mill maintenance and equipment setting work, RG Smith filed Charges

against the Ironworkers and Sheet Metal Workers. (FEX 1(k), 1(i)). By Order of the Regional Director, these Charges were consolidated for hearing in a single 10(k) proceeding. (FEX 1(g)).

IV. APPLICATION OF THE STATUTE

Before the Board may proceed with resolving a dispute under Section 10(k) of the Act, there must be reasonable cause to believe that Section 8(b)(4)(D) has been violated. *Southwest Regional Council of Carpenters (Standard Drywall)*, 348 NLRB 1250, 1252 (2006). In other words, there must be reasonable cause to believe that: (1) there are competing claims for the disputed work; (2) a party has used proscribed means to enforce its claim to the work in dispute; and (3) the parties have no agreed-upon method for voluntary adjustment of the dispute. *Id.* at 1252-53. In the present case there is simply no doubt Section 8(b)(4)(D) has been violated.

A. There are Competing Claims for the Work.

"It is well established that a dispute within the meaning of Section 8(b)(4)(D) requires a choice between two competing groups." *United Food & Commercial Workers Local 1222 (FedMart Stores)*, 262 NLRB 817, 819 (1982). Accordingly, there must 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." *Id.* In the present case, the record is replete with such competing claims.

The record abundantly establishes that RG Smith always assigned mill maintenance and equipment setting work to members of the Ironworkers and Sheet Metal Workers (and other trades) and not to members of the Millwrights. (Tr. 32-36, 65-66, 104-109). Understandably, RG Smith, as well as the Ironworkers and Sheet Metal Workers, have announced their desire and intent to maintain this arrangement. (Tr. 33-

34, 54-55, 66, 80-86, 106-109, 110-111). In contrast, the Millwrights have made repeated attempts to take this work from the other trades, beginning with requests and later including demands and threats. (Tr. 34-35, 37-47, 67-79, 104).

Not surprisingly, the Ironworkers and Sheet Metal Workers also claim the work that they have been doing for decades. (CPEX 7, 9; Tr. 48-54). Therefore, there is no reasonable dispute that there are competing claims for the work.

B. The Unions Engaged in Proscribed Activity.

Under Section 8(b)(4)(D), it is an unfair labor practice to encourage individuals to engage in a strike, or to threaten, coerce, or restrain any person engaged in commerce, where an object thereof is “forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class....” Accordingly, “[a] threat to strike and picket to force or require an employer to reassign disputed work constitutes reasonable cause to believe that Section 8(b)(4)(D) has been violated. *Laborers’ Int’l Union of North America, Local 76 (Albin Carlson Co.)*, 286 NLRB 698, 699-70 (1987).

In this case, both the Ironworkers and Sheet Metal Workers have both threatened to engage in activity expressly designed to coerce RG Smith to continue to assign mill maintenance and equipment setting work to those trades as it has done in the past. (CPEX 7, 9; Tr. 48-54). Each of these threats by the Ironworkers and Sheet Metal Workers constitutes proscribed means under Section 8(b)(4)(D) and, as a result, there is far more than reasonable cause to believe that the statute has been violated.

C. The Parties Have Not Agreed on a Method for Voluntary Adjustment of the Dispute.

The Parties stipulated that there is no provision in any agreement that binds RG Smith, the Ironworkers, the Sheet Metal Workers, and the Millwrights to a procedure for resolving the dispute over the assignment of the work. (Tr. 14-15).

V. MERITS OF THE DISPUTE

Having established that the three preliminary criteria are satisfied in this case,

Section 10(k) requires the Board to make an affirmative award of the disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402 (1962).

Eshbach Brothers, 344 NLRB at 203. In this case, there is no need for any “balancing” because all of the most relevant factors weigh heavily in favor of the *status quo*, and no factors weigh in favor of the Millwrights.

A. Certifications and Collective Bargaining Agreements.⁴

The current Ironworkers’ agreement contains several provisions under Craft Jurisdiction, Section 4 that set forth the jurisdiction of the Ironworkers regarding mill maintenance and equipment setting work:

This Agreement shall cover and include but is not limited to the fabrication, production, erection and construction of all iron, steel, ornamental lead, bronze, brass, copper, aluminum, all ferrous and non-ferrous metals; precast, prestressed and poststressed concrete structures, agitators, air ducts, anchors, applications of all sealants such as Thiokol, Neoprene and similar types used to seal metal surfaces; aprons, aqueducts, awnings, bar-joint, blast furnaces, book stacks, boilers (sectional water tube, and

⁴ The Parties stipulated that there are no Board Certifications concerning the employees involved in this dispute. (Donley’s II Tr. 18).

tubular), boxes, brackets, bridges, bucks, bulkheads, bunkers, cableways, caissons, canopies, caps, cast tiling, chutes, clips, cofferdams concentrators, conveyors, coolers, coping, corbels, corrugated sheets when attached to steel frames; cranes (the erection, installation, handling, operating and maintenance on all forms of construction work), crushers, cupolas, curtains, dams, decking (metal); as well as "Trusdeck," Mahon "M" deck and other dual purpose type of roof deck), derricks, docks, domes, dredges, drums, duct and trench frames and plates, dumb waiter enclosures, dumpers, elevators, elevator cars, elevator enclosures, enamel tanks, enamel vats, escalators, expanded metals, fascias, false work, fans, fence and ornamental fence, fending, fire escapes, fins, flag poles, floor construction and flooring, flumes, frames, frames in support of boiler, fronts, fur rooms, gates, grating, grillage and foundation work, grill work, guards, hangers, hanging ceilings, hoppers, hot rooms, inclines, iron doors, jail and cell work, joints (precast, prestressed, and poststressed), kalomeined doors, kilns, lintels, lockers, locks, louvers, machinery (moving, hoisting, lowering and placing on foundations), making and installation of all articles made of wire and fibrous rope; marquees, material altered in field such as: framing, cutting, bending, drilling, burning and welding by acetylene gas and electric machines; metal curtain wall; window wall, glass metal decking, metal forms and false work pertaining to concrete construction, metal furniture, metal windows and enclosures, mixers, monorails, multi-plate, operating devices, ovens, pans, panels (insulated and non-insulated, factory and field assembled), pen stocks, pile drivers, plates, porcelain enameled panels, prefabricated metal building, pulverizers, racks, railings (including pipe), railroad bridgework and maintenance, reservoirs, rigging (including shipyards, navy yards, vessels and government departments) roofs, rolling shutters, safe deposit boxes, safes, sash, scaffolding, seats, shafting, sheet piling, shelving, shoring, sidewalk and vault lights, signs, skip hoists, skylights, smoke conveyors, spandrels, metal and precast concrete, spillways, stacks, stage equipment and counterweight system and rigging for asbestos curtains, stairways, stokers, storage rooms, stoves, subways, sun shades, tables, towers, tanks, tracks, tramways, travelers, traveling sheaves, all types of plastic, and fiberglass and metal sheeting and siding; trusses (steel, Howe and combination), tunnels, vats, vault doors, vaults, ventilators, vertical hydraulic elevators, vessels, viaducts, wire work; wrecking and dismantling of all of the above and all housesmith work and submarine diving in connection with or about the same.

The handling and erection of all fiber reinforced "composite" products such as fiberglass reinforcing bars for structural, architectural and non-conducting concrete; ceramics, fiber reinforced plastics, polymers, vinyls and similar materials commonly referred to as "Composites" used to produce stair stringers, treads and risers, platform and floor grating, handrails, structural framing, cables and all other products which traditionally have been made of iron, steel, aluminum, bronze, brass,

copper, graphite, titanium and other normal construction metals to achieve corrosion free, high dielectric, anti-magnetic' non-conductive requirements as required by the designers calculated performance and function of the products.

(CPEX 1, at 2-3). (See also, Tr. 126-127). The Sheet Metal Workers' agreement provides a work jurisdiction including:

a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all HVAC systems, air-veyor systems, exhaust systems, and air handling systems regardless of material used, including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct-lining; (c) testing, servicing, and balancing of all air-handling equipment and duct work; (d) the preparation of all shop and field sketches, whether manually drawn or computer assisted, used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches, and (e) metal roofing; and (f) all other work included in the jurisdictional claims of the International Association of Sheet Metal, Air, Rail, and Transportation Workers.

(CPEX 2, at 1). The Millwrights' collective bargaining agreement describes the following work jurisdiction:

[U]nloading, hoisting, rigging, skidding, moving, dismantling, aligning, erecting, assembling, repairing, maintenance, and adjusting of all structures, processing areas, either under cover, under ground, or elsewhere, required to process material, handle, manufacture or service, be it powered or receiving power manually, by steam, gas, electricity, gasoline, diesel, nuclear, solar, water, air or chemically, and in industries such as and including, which are identified for the purpose of description, but not limited to, the following: woodworking plants; canning industries; steel mills; coffee roasting plants; paper and pulp; cellophane; stone crushing; gravel and sand washing and handling; refineries; grain storage and handling; asphalt plants; sewage disposal; water plants; laundries; bakeries; mixing plants; can, bottle, and plastic bag plants; textile mills; paint mills; breweries; milk processing plants; power plants; installation of control rods and equipment in reactors; and installation of mechanical equipment in rocket missile bases, launchers, launching gantry, floating bases, hydraulic escape doors and any and all component parts thereto, either assembled, semi-assembled or disassembled. The installation of, but not limited to, the following: setting-up of all engines, motors, generators, air compressors, fans, pumps, scales, hoppers, conveyors of

all types, sizes, and their supports; escalators; man lifts; moving sidewalks; hoists; dumb waiters; all types of feeding machinery; amusement devices; mechanical pin setters and spotters in bowling alleys; refrigeration equipment; and the installation of all types of equipment necessary and required to process material either in the manufacturing or servicing. The handling and installation of pulleys, gears, sheaves, fly wheels, air and vacuum drives, worm drives and gear drives directly or indirectly coupled to motors, belts, chains, screws, legs, boots, guards, booth tanks, all bin valves, turn heads and indicators, shafting, bearings, cable sprockets, cutting all key seats in new and old work, troughs, chippers, filters, calendars, rolls, winders, rewinders, slitters, cutters, wrapping machines, blowers, forging machines, rams, hydraulic or otherwise, planning, extruder, ball, dust collectors, equipment in meat packing plants, splicing of ropes and cables. The laying-out, fabrication and installation of protection equipment including machinery guards, making and setting of templates for machinery, fabrication of bolts, nuts, pans, drilling of holes for any equipment which the Millwrights install regardless of materials; all welding and burning regardless of type, fabrication of all lines, hose or tubing used in lubricating machinery installed by Millwrights; grinding, cleaning, servicing and any machine work necessary for any part of any equipment installed by the Millwrights; and the break-in and trial run of any equipment or machinery installed by the Millwrights. It is agreed the Millwrights shall use the layout tools and optic equipment necessary to perform their work.

(CPEX3, at 5). Thus, all three agreements purport to cover the performance of mill maintenance and equipment setting work. Therefore, this factor does not favor an award to any group of employees.

B. Past Practice.

The past practice in this case is clear and uncontradicted. For as long as anyone can remember, all mill maintenance and equipment setting work has been assigned to Ironworkers and Sheet Metal Workers, either alone or in composite crews. (Tr. 31-32, 64-65, 75-76).

The only deviations from this practice are insignificant. Reece testified that, upon the Millwrights' urging, he once attempted to use a Mansfield-based millwright, but when it actually came time to hire him, the individual did not return RG Smith's phone calls

and, thus, was never hired. (Tr. 67-68). Black testified he had used Millwrights on only one non-NMA job, the Timken Forge Press Job, and that this was only at the urging of the Millwrights' agents. (Tr. 104).

Thus, the Employer's nearly uniform past practice in this case weighs heavily in favor of continued assignment of mill maintenance and equipment setting work to Ironworkers and Sheet Metal Workers.

C. Employer Preference.

RG Smith prefers to maintain this past practice due to the gross inefficiency that the Millwrights have exhibited on the rare occasions they were used by RG Smith to perform mill maintenance and equipment setting work, because of their inability to get along with the other trades when placed on composite crews, and because they have not developed the familiarity and relationships with RG Smith's clients that the Ironworkers and Sheet Metal Workers have maintained over recent decades. (Tr. 33-34, 80-86, 104-109).

For these reasons, RG Smith opposes assignment of mill maintenance and equipment setting work to Millwrights, and instead would like to maintain the current and long-standing practice of assigning such work to the Ironworkers and Sheet Metal Workers. This factor is thus completely in favor of maintaining the *status quo* in assigning mill maintenance and equipment setting work.

D. Area and Industry Practice.

The record in this case establishes that the area practice in Northern Ohio is to assign mill maintenance and equipment setting work to Ironworkers and Sheet Metal Workers. (Tr. 128, 158). By contrast, there is no record evidence, apart from the rare exceptions discussed by Black and Reece, that the Millwrights perform this work in

Northern Ohio. Therefore, the record evidence clearly establishes that this factor turns entirely in favor of continuing to assign mill maintenance and equipment setting work to Ironworkers and Sheet Metal Workers.

E. Relative Skills and Training.

It is undisputed that both the Ironworkers and the Sheet Metal Workers provide substantial training at training centers in Ohio that includes the skills necessary to perform mill maintenance and equipment setting work. (Tr. 128-134, 151-169; IWEX 3(a)-3(n); SMWEX A1-4, E1-5, F1-8, G1-38, H1-17, J1-2, K1-3, L1-3, M1-3, Q1-5, R1-3). Meanwhile, the record evidence demonstrates that Millwrights are not as skilled in the tasks related to such work. (Tr. 107) (Millwrights took 90 minutes to perform a task that Ironworkers and Sheet Metal Workers commonly accomplish in approximately ten minutes). Thus, this factor weighs toward the Ironworkers and Sheet Metal Workers, as RG Smith affirmatively testified that Ironworkers and Sheet Metal Workers who perform mill maintenance and equipment setting work on their jobs are trained, certified, and skilled in such work.

F. Economy and Efficiency of Operation.

It is undisputed that the exclusive use of Millwrights to perform mill maintenance and equipment setting work would be grossly inefficient. Nicely testified that Ironworkers and Sheet Metal Workers are "more efficient" because "they're quicker, they're faster, they've been around that product or that equipment, they know the plant, they know the personnel, they've worked on these things." (Tr. 33-34). Reece asserted that, as between the Ironworkers and the Sheet Metal Workers, on the one hand, and the Millwrights, on the other, "there's really no comparison." (Tr. 80). This is because of the Ironworkers and Sheet Metal Workers' history with RG Smith's customers, their

longstanding relationships, and the skill sets they have developed as a result of these extensive relationships with RG Smith's customers. (Tr. 80-81). Black testified that, in his experience, the Millwrights are incredibly inefficient when performing mill maintenance and equipment setting work. (Tr. 106-107). He personally observed, side by side, the productivity of the Ironworkers as compared with that of the Millwrights, and found "[t]he Iron Working crews got a substantial amount of more work done than the Millwright crews did in the course of a day." (Id.).

Thus, as in *Eshbach Brothers*, it is more economical and efficient to have employees represented by Ironworkers and Sheet Metal Workers perform mill maintenance and equipment setting work because they are more adept, are able to work more effectively in composite crews, and have established familiarity and relationships with RG Smith's clients. Therefore, as the Board held in *Eshbach Brothers*, 344 NLRB at 204; *Paul H. Schwender, Inc.*, 304 NLRB at 625; *Joseph Lorenz, Inc.*, 303 NLRB at 381; *Central Blacktop Co.*, 292 NLRB at 60; *Albin Carlson & Co.*, 286 NLRB at 701; and *C.J. Cockley Co., Inc.*, 257 NLRB at 440, the factor of economy and efficiency of operations weighs compellingly in favor of the *status quo* and against the claims of the Millwrights for mill maintenance and equipment setting work.

VI. RELIEF SOUGHT

For the foregoing reasons, RG Smith respectfully requests that it be allowed to continue to assign mill maintenance and equipment setting work to the Ironworkers and Sheet Metal Workers as appropriate, and among whom there is no dispute. It asks for a ruling that the Millwrights are not entitled to claim such work on the AK Steel job or other RG Smith jobs in Northern Ohio, or to engage in violations of Section 8(b)(4)(D) to obtain it.

VII. CONCLUSION

The relevant factors in this case overwhelmingly indicate that the Charging Party Employer properly assigned the work at the AK Steel Job and, moreover, should be allowed to continue to assign mill maintenance and equipment setting work as they always have: to Ironworkers and Sheet Metal Workers. The factors of employer preference, past practice, area and industry practice, and economy and efficiency are compelling in that regard. The factor of relative skills and training is, at least, neutral, and certainly not in favor of the Millwrights. The factor of certification and collective bargaining agreements is neutral. Under these circumstances, there is no question that the performance of mill maintenance and equipment setting, including at the AK Steel job, should be awarded to the Ironworkers and Sheet Metal Workers. Moreover, this award should be area-wide in view of the area-wide campaign by the Millwrights to gain the disputed work.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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