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**Local 40, International Brotherhood of Electrical Workers, AFL-CIO and NBCUniversal Media, LLC and Universal City Studios, LLC and National Association of Broadcast Employees & Technicians, Local 53.** Case 31–CD–149956

May 24, 2016

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA  
AND HIROZAWA

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act. NBCUniversal Media, LLC (NBCU) filed a charge on April 13, 2015, alleging that Local 40, International Brotherhood of Electrical Workers, AFL–CIO (IBEW) violated Section 8(b)(4)(ii)(D) of the Act by threatening to picket or engage in other economic action with the object of forcing Universal City Studios, LLC (the Employer) to assign certain work to employees represented by IBEW rather than to employees represented by National Association of Broadcast Employees & Technicians, Local 53 (NABET). A hearing was held on May 13 and 14, 2015, before Hearing Officer John Rubin. Thereafter, the Employer, IBEW, and NABET filed posthearing briefs.

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

The Board affirms the hearing officer’s rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer is a Delaware limited liability company with an office and place of business located in Universal City, California. The parties stipulated that the Employer annually derives gross revenues in excess of \$1 million and purchases and receives at its Universal City, California facility goods valued in excess of \$50,000 directly from points outside the State of California. The parties further stipulated, and we find, that the Employer is an employer within the meaning of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties additionally stipulated, and we find, that IBEW and NABET are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer is in the business of motion picture and television production at its facility in Universal City, California. It is a member of the Alliance of Motion Picture and Television Producers (AMPTP), a multiemployer association, and is signatory to a collective-bargaining agreement between AMPTP and IBEW (the AMPTP Agreement). The AMPTP Agreement was effective from August 1, 2012, through July 31, 2015. The Employer does not have a collective-bargaining agreement with NABET.

The Employer’s Universal City facility consists of an upper lot and a lower lot. The lower lot contains production studios, sound stages, office buildings, and related facilities.<sup>1</sup> For several decades, the Employer has used employees represented by IBEW to perform the HVAC (heating, ventilation, and air conditioning), electrical, and related skilled maintenance work at the buildings and other structures on the lower lot. Employees called “tower engineers” perform HVAC, electrical, and plumbing work and are assigned to specific buildings on the lower lot. Electrical department and HVAC department employees install, maintain, and repair the electrical and HVAC systems for the production facilities, sound stages, and buildings on the lower lot that do not have regular tower engineer coverage.

Prior to 2013, NBCU operated television production facilities in Burbank, California (the Burbank lot). In 2007, NBCU sold the Burbank lot, then leased it back from the new owner and continued to operate there. For several decades prior to the sale, and for a few years after, NABET-represented air conditioning and plant maintenance employees employed by NBCU performed the HVAC and building maintenance work at the Burbank lot. NBCU and NABET were parties to a collective-bargaining agreement effective April 1, 2009, through March 31, 2015 (the NBCU Master Agreement). The “L contract” within the NBCU Master Agreement covered the air conditioning and plant maintenance employees at the Burbank lot (the L contract employees).

In 2010, the new owner of the Burbank lot began taking over some of the HVAC and building maintenance work from NBCU. In 2012, the new owner informed NBCU that it no longer wanted to use NBCU’s L contract employees, and in January 2013, the new owner took over the remaining HVAC and building maintenance work.

<sup>1</sup> The upper lot, which is not involved in this case, features the Universal Studios Hollywood Theme Park and related tourist attractions.

nance work. As a result, the L contract employees at the Burbank lot were laid off.<sup>2</sup>

Beginning in 2012, two buildings on the Employer's lower lot were renovated to house NBCU's broadcast television operations. The buildings were first called the Universal City Broadcast Center (UCBC) and were subsequently renamed the Tom Brokaw News Center (BNC). The renovations were completed in 2013. Beginning in fall 2013 and continuing into 2014, NBCU's broadcast television operations were transferred from the Burbank lot to the BNC.

In a telephone conversation in early August 2013, Mark Higginbotham, the Employer's director of labor relations, informed Steven Ross, NABET's president, that the Employer's IBEW-represented employees would perform the HVAC and building maintenance work at the BNC.<sup>3</sup> Ross replied that the work should be assigned to NABET. On August 13, 2013, NABET filed a grievance against NBCU, claiming that

work covered by the "L" contract of the current NABET-CWA/NBCU Master Agreement was being assigned to members of the IBEW, including, but not limited to, air conditioning and plant maintenance work at the newly constructed UCBC Building located on the Universal lot within Los Angeles. The UCBC Building is to be the new home of NBC, KNBC, and Telemundo operations. As such, the UCBC Building will be a facility "of the Company [NBCU] in Los Angeles" under the terms of the NABET-CWA/NBCU Master Agreement and the assignment of "L" contract personnel is required.

In a letter sent to Higginbotham on August 30, 2013, IBEW likewise claimed the maintenance work at the BNC. In September 2013, the Employer assigned the HVAC, electrical, and related maintenance work at the BNC to tower engineers represented by IBEW. NABET referred its grievance to arbitration on October 9, 2014. On March 26, 2015, in response to NABET's pursuit of its grievance, Bill Brinkmeyer, IBEW's business manager/financial secretary, sent a letter to Higginbotham, stating:

<sup>2</sup> The parties stipulated that a grievance filed by NABET after it was notified that the L contract employees at the Burbank lot would be laid off was settled on December 26, 2012. Pursuant to the settlement, all of NBCU's L contract employees were laid off on December 28, 2012.

<sup>3</sup> Higginbotham testified that he called Ross because NABET had filed a grievance after the Burbank lot's new owner informed NBCU that it no longer wanted to use NBCU's L contract employees. Thus, Higginbotham anticipated that NABET would similarly assert that the maintenance work at the BNC should be assigned to NABET members under the L contract.

[A]s you likely know, under IBEW's current collective bargaining agreement, IBEW is the bargaining representative of electricians and related skilled maintenance employees on the Universal Studios lot. IBEW considers NABET's continued pursuit of its grievance to be a claim for work which is covered under our agreement and within the jurisdiction of IBEW. As a result, if NABET or any other union continues to claim or is assigned work covered under our agreement, IBEW will take action, including economic action, such as picketing, to compel NBC Universal [sic] to reassign the work back to workers represented by IBEW.

#### *B. Work in Dispute*

The parties stipulated, and we find, that the disputed work is the installation, operation, maintenance and repair of the heating, ventilation, and air conditioning system and the electrical and plumbing systems plant maintenance at the Tom Brokaw News Center in Universal City, California.

#### *C. Contentions of the Parties*

The parties agree that there is reasonable cause to believe that IBEW has violated Section 8(b)(4)(D) and that no agreed-upon method to adjust the dispute voluntarily binds all parties. On the merits, the Employer and IBEW contend that the work in dispute should be awarded to employees represented by IBEW based on the factors of collective-bargaining agreements, employer preference and past practice, area and industry practice, relative skills and training, and economy and efficiency of operations. NABET asserts that the factors of collective-bargaining agreements, past practice, area and industry practice, relative skills and training, and economy and efficiency of operations favor awarding the work in dispute to employees represented by NABET.

#### *D. Applicability of the Statute*

The Board may proceed with a determination of a dispute under Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005). This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work between rival groups of employees and that a party has used proscribed means to enforce its claim to that work. Additionally, there must be a finding that the parties have not agreed on a method for voluntary adjustment of the dispute. *Id.*

The parties stipulate, and we find, that IBEW and NABET both claim the work in dispute. In addition, we find reasonable cause to believe that IBEW used means proscribed by Section 8(b)(4)(D) to enforce its claim to

the disputed work. In its March 26, 2015 letter, IBEW threatened to picket or engage in other economic action if NABET or any other labor organization was assigned the disputed work. See *Bricklayers (Cretex Construction Services)*, 343 NLRB 1030, 1032 (2004) (“[W]here a charged party has used language that on its face threatens economic action, the Board will find reasonable cause to believe that Section 8(b)(4)(D) has been violated.”) Finally, the parties also stipulate, and we find, that there is no agreed-on method for voluntary adjustment of this dispute.

Accordingly, we find that all three prerequisites for the Board’s determination of a jurisdictional dispute are established and that this dispute is properly before the Board for determination.

#### *E. Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577–579 (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 involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

##### 1. Certifications and collective-bargaining agreements

The parties stipulated that the Employer is not failing to conform to any Board certification concerning the employees involved in this dispute.

As set forth above, as a member of the AMPTP the Employer is party to a multiemployer collective-bargaining agreement with IBEW. The AMPTP Agreement applies to journeymen and apprentice air conditioning mechanics and journeymen and apprentice electricians employed by signatory employers in Los Angeles County, California. The AMPTP Agreement covers “[t]he installation . . . and maintenance . . . of permanent or portable refrigeration and air conditioning systems and heating systems . . . and normal operation of such equipment and systems,” “generator rooms and rectifier rooms,” “portable generator sets and prime movers therefor,” “rectifier sets,” and “[a]ll repair and maintenance work in and around the studio.”<sup>4</sup>

<sup>4</sup> Although the AMPTP Agreement does not specifically refer to plumbing, the disputed plumbing work appears to come within the work-jurisdiction provision covering “[a]ll repair and maintenance work in and around the studio.”

The Employer does not have a collective-bargaining agreement with NABET. Although NABET has a collective-bargaining agreement with NBCU, that agreement is irrelevant to the analysis. The relevant collective-bargaining agreement is the one that binds “the employer who has the ultimate control over the assignment of the work.” *Elevator Constructors Local 91 (Otis Elevator Co.)*, 340 NLRB 94, 96 (2003). Here, the Employer controls the assignment of the work in dispute, not NBCU.<sup>5</sup>

Accordingly, we find that the factor of collective-bargaining agreements favors an award of the disputed work to employees represented by IBEW.<sup>6</sup>

##### 2. Employer preference and past practice

Higginbotham and Brent Whaley, the Employer’s director of facilities engineering, testified that tower engineers represented by IBEW have been performing the disputed work since the BNC renovations were completed in 2013, and that the Employer prefers that this work remain with them.<sup>7</sup>

<sup>5</sup> At the hearing, NABET asserted that the Employer and NBCU are joint employers and/or a single employer. However, NABET failed to prove either theory. Higginbotham testified that NBCU and the Employer are separate entities, and NABET did not introduce evidence disputing this testimony. The record contains some evidence suggesting a relationship between the Employer and NBCU—in particular, Higginbotham acknowledged that he handled some labor relations matters for NBCU, and the Employer and NBCU were represented by the same counsel in this proceeding—but this evidence is insufficient to support a joint- or single-employer determination. Moreover, NABET did not raise these arguments in its post-hearing brief and thus has abandoned them.

<sup>6</sup> We reject NABET’s argument that its agreement with NBCU applies to the work in dispute. NABET cites Side Letter 61 to the NBCU Master Agreement, which states that NBCU “will not assert, based solely on a change of location from [NBCU]’s Burbank facility to another location within the Los Angeles metropolitan area of an entity(s) and/or operation(s) covered under . . . the Master Agreement, that such entity(s) and/or operation(s) is no longer covered.” Regardless of what NBCU’s obligations are under Side Letter 61, an issue we find unnecessary to reach, Side Letter 61 does not give NBCU control over the assignment of the HVAC and building maintenance work at the BNC. The assignment of that work is controlled by the Employer. Nor does Side Letter 61 somehow cause the Employer to become bound by the NBCU Master Agreement.

<sup>7</sup> NABET contends that the Employer’s preference should be afforded little weight because the NBCU Master Agreement’s “clear and express contractual language” requires that the disputed work be assigned to employees NABET represents, and NBCU should not be allowed to escape its contractual obligations simply because it is located on the property of a third party that prefers assigning the disputed work to a different labor organization. However, as explained above, the NBCU Master Agreement does not require *the Employer* to assign the disputed work to NABET-represented employees. Member Miscimarra also notes that the Board attaches significant weight to the employer’s preference in making work assignment awards, and the terms of the competing unions’ collective-bargaining agreements are only one of several factors the Board considers in resolving Sec. 10(k)

NABET argues that the Employer's past practice "for broadcasting facilities such as the Burbank Studios lot" has been to use NABET-represented employees to perform HVAC and maintenance work. But there is no evidence that the Employer (as opposed to NBCU) ever had control over the HVAC and maintenance work at the Burbank lot. Moreover, there is no evidence that the Employer has used employees represented by NABET for the HVAC and building maintenance work at the BNC or any other motion picture or broadcasting facility located on the lower lot.

Accordingly, we find that the factors of the Employer's preference and past practice favor an award of the disputed work to employees represented by IBEW.

### 3. Area practice

As to area practice, Whaley and IBEW business manager/financial secretary Brinkmeyer testified that the Employer uses IBEW-represented employees to perform HVAC and building maintenance at the other buildings and structures throughout the lower lot and has done so for several decades. In addition, Brinkmeyer identified seven other AMPTP-member television and motion picture studios in Los Angeles County where IBEW-represented electricians and HVAC mechanics perform facilities maintenance under the AMPTP Agreement.

According to NABET's president, Ross, NABET has eight or nine contracts with companies in Los Angeles County and is working on a contract for a newly organized bargaining unit in Las Vegas, Nevada. Aside from the L contract within the NBCU Master Agreement, however, only one of those contracts covers HVAC and building maintenance employees in Los Angeles County. Under these circumstances, we find that area practice favors awarding the disputed work to employees represented by IBEW.

### 4. Industry practice

Little evidence was presented as to industry practice. Brinkmeyer testified that employees covered by the AMPTP Agreement may travel outside the Los Angeles area if they are working on a production that starts in Los Angeles and later relocates. Ross testified that NABET represents HVAC and building maintenance employees at NBCU's broadcasting facilities in New York City, but those employees are represented by a different NABET Local. NABET asserts that the industry practice is for NABET-represented employees to perform HVAC work at broadcasting facilities owned and/or occupied by employers that are signatory to collective-bargaining

agreements with NABET. However, the evidence shows that NABET-represented employees ceased performing the HVAC work at the Burbank lot after December 28, 2012, even though NBCU continued to occupy the facility until 2014. Accordingly, we find that this factor does not favor an award of the work in dispute to either employee group.

### 5. Relative skills and training

Higginbotham and Whaley testified that IBEW-represented employees have been successfully performing the disputed work at the renovated BNC since mid-2013 and are trained on and experienced with the BNC's systems and equipment. In particular, Whaley testified that the BNC's digital automation system, which monitors and controls the BNC's HVAC and other systems and equipment, requires specialized training and knowledge to operate. According to Whaley, IBEW-represented employees received training on the BNC's digital automation system from the vendor or from IBEW leadership. More generally, Brinkmeyer testified that IBEW has an industry training program for electrician and HVAC mechanic apprentices, and Higginbotham testified that the Employer has often used IBEW apprentices over the years. In addition, Higginbotham testified that the Employer is able to obtain qualified workers with the necessary training and skills from IBEW's hiring hall.

Ross testified that NABET members have training and experience as HVAC mechanics, and NABET-represented employees successfully worked on the HVAC systems and equipment at the Burbank lot. However, Kevin Watson, chief engineer of the BNC, testified that even an individual with an HVAC background would need specialized training to work on the digital automation system at the BNC. NABET did not present any evidence showing that employees it represents have such training or other training specific to the BNC's systems and equipment. Further, NABET does not run a training program or operate a hiring hall for electricians or HVAC mechanics.

Based on this evidence, we find that the factor of relative skills and training weighs in favor of awarding the work in dispute to employees represented by IBEW.

### 6. Economy and efficiency of operations

Whaley and Watson testified that it is more economical and efficient to assign the disputed work to IBEW-represented employees because they can interchange with other tower engineers and electrical and HVAC department employees at other facilities on the lower lot. Whaley and Watson explained that tower engineers are assigned to cover the BNC 24 hours a day, 7 days a

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disputes. See, e.g., *Graphic Communications Workers Local 508M (Jos. Berning Printing)*, 331 NLRB 846, 848 (2000).

week: five tower engineers are regularly assigned to the BNC, and a tower engineer from another building covers two weekend shifts. Whaley testified that since the BNC is the only building on the lower lot with 24/7 tower engineer coverage, BNC tower engineers respond to any emergency maintenance issues that arise on the lower lot when other tower engineers and electrical and HVAC employees are not on duty. In addition, Watson testified that BNC tower engineers assist other tower engineers and the HVAC department with the automation systems for other lower lot buildings and facilities on a weekly basis, even when other regularly scheduled employees are working. Whaley and Watson also testified that BNC tower engineers assist other tower engineers and the electrical and HVAC departments with special projects as needed; other tower engineers or electrical or HVAC employees occasionally supplement BNC tower engineers as well.

NABET asserts that because the BNC's HVAC systems are separate from the systems for the other buildings and facilities on the lower lot, it would be at least equally efficient for a separate NABET-represented crew to maintain the BNC's HVAC systems. However, as set forth above, the record shows that BNC tower engineers perform additional electrical and HVAC work throughout the lower lot. Brinkmeyer testified that if NABET-represented employees were working at the BNC, IBEW's position would be that those employees could not provide electrical or HVAC services to any of the other facilities on the lower lot. Thus, assigning the disputed work to NABET-represented employees would eliminate the Employer's ability to cross-utilize BNC tower engineers, other tower engineers, and electrical and HVAC employees. Under these circumstances, we find that it is more efficient and economical to assign the disputed work to employees represented by IBEW. See, e.g., *Operating Engineers Local 825 (Walters & Lambert)*, 309 NLRB 142, 145 (1992) (factor of economy and efficiency of operations favored laborers over operating engineers where evidence showed that laborers possessed knowledge and skills necessary to perform other

tasks when not performing disputed work). Therefore, we find that this factor favors an award of the disputed work to employees represented by IBEW.

#### CONCLUSION

After considering all of the relevant factors, we conclude that employees represented by IBEW Local 40 are entitled to perform the work in dispute. We reach this conclusion based on the factors of collective-bargaining agreements, employer preference and past practice, area practice, relative skills and training, and economy and efficiency of operations. In making this determination, we award the work to employees represented by IBEW, not to that labor organization or its members.

#### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Universal City Studios, LLC, who are represented by Local 40, International Brotherhood of Electrical Workers, AFL-CIO are entitled to perform the installation, operation, maintenance, and repair of the heating, ventilation, and air conditioning system and the electrical and plumbing systems plant maintenance at the Tom Brokaw News Center in Universal City, California.

Dated, Washington, D.C. May 24, 2016

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra, Member

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Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD