

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MICHIGAN LABORERS' DISTRICT COUNCIL, AN  
AFFILIATE OF THE LABORERS' INTERNATIONAL  
UNION OF NORTH AMERICA, AFL-CIO,

Charged Party,

CASE NO. 07-CD-221111

RAM CONSTRUCTION SERVICES OF MICHIGAN, INC.,

Charging Party,

LOCAL 324, INTERNATIONAL UNION OF OPERATING  
ENGINEERS, AFL-CIO

Interested Party,

LOCAL 2, INTERNATIONAL UNION OF BRICKLAYERS  
AND ALLIED CRAFTWORKERS (BAC), AFL-CIO,

Interested Party,

LOCAL 149, UNITED UNION OF ROOFERS, WATERPROOFERS  
AND ALLIED WORKERS, AFL-CIO,

Interested Party,

MICHIGAN REGIONAL COUNCIL OF CARPENTERS,  
UNITED BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA, AFL-CIO,

Interested Party.

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**MICHIGAN LABORERS' DISTRICT COUNCIL'S  
POST- 10(k) HEARING BRIEF**

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Charged Party Michigan Laborers' District Council ("Laborers"), an affiliate of the Laborers' International Union of North America, AFL-CIO, by and through its attorney Daniel G. Helton, submits the following Post 10(k) hearing brief in the above-captioned matter:

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## **I. INTRODUCTION**

For at least the last thirty years the Laborers have had a collective bargaining agreement with the Employer/Charging Party RAM Construction Services, Inc. (“RAM”). During that entire period Laborers’ members have operated certain power driven and power generating equipment, including Bobcat<sup>®</sup> and other skid-steers with various attachments,<sup>1</sup> shot blasters, hi-los, fork trucks, ride-on sweepers, concrete saws, pneumatic hammers, generators, and other tools. With a filing of a grievance on May 3, 2018, Local 324, International Union of Operating Engineers, AFL-CIO (“Local 324”) claimed the exclusive right to perform the work that the Laborers – as well as employees represented by the other unions participating in the Hearing — had been performing for years. Upon being informed that RAM was going to award this work exclusively to Local 324, the Laborers threatened work to picket if RAM carried through with its announced intention to take away the Laborers’ work. A hearing was held pursuant to Section 10(k) of the National Labor Relations Act, 29 U.S.C. § 160(k) on August 1, 2 and 7, 2018. The evidence presented at hearing conclusively established that Local 324 was claiming a vast expansion in the amount and kind of work its members have historically performed for RAM and that that expansion would come at the expense of employees represented by the Laborers and other unions. The Laborers do not claim or seek to acquire additional work, merely maintenance of the status quo. The Board’s decision should maintain the status quo among all unions that are parties to this proceeding.

## **II. THE PARTIES AND COLLECTIVE BARGAINING AGREEMENTS**

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<sup>1</sup> Throughout the Hearing and in this Brief, “Bobcat,” the trademarked name of a specific

The Employer, RAM Construction Services, Inc.,<sup>2</sup> is a Michigan corporation that is primarily involved in restoration of existing buildings. RAM's divisions include Building Restoration, Vertical Restoration, and Transportation. (RAM Ex. 4 and testimony of RAM President Robert Mazur, Tr., p. 125.) RAM has collective bargaining agreements with affiliates of the Laborers' International Union of North America ("LIUNA"), Operating Engineers International Union ("OEIU"), International Union of Bricklayers and Allied Craftworkers, United Brotherhood of Carpenters and Joiners of America, and the United Union of Roofers, Waterproofers and Allied Workers.<sup>3</sup>

The Charged Party, the Laborers, have had a collective bargaining relationship with RAM for approximately 30 years. (Testimony of Laborers' Business Manager Geno Alessandrini, Sr., Tr., pp. 425-426.) Through its International Union, the Laborers are party to a "National Specialty Agreement" that was effective June 1, 2007, and continues in full force and effect. (Joint Exhibit 5 and Alessandrini, Tr., p. 427.) The National Specialty Agreement ("NSA") covers most terms and conditions of employment applicable to the employee-members of RAM, but the wages and benefits are "established through collective bargaining between the appropriate Local Union and/or District Council and the local contractors in the area where the particular job of the Employer is located." (Joint Exhibit 5, p. 10.)

Local 324, has had a collective bargaining agreement with RAM since at least August 21, 2006, when RAM signed a "short form" agreement. (RAM Ex. 12.) The short form agreement expressly provides that "the Wage Rates, Fringe Benefits, and all other terms, conditions and

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<sup>2</sup> RAM was formerly known as Western Waterproofing Company.

<sup>3</sup> All of these respective International unions are affiliates of the AFL-CIO and all are members of the Building and Construction Trades Department of the AFL-CIO.

provisions contained in [master agreements negotiated between Local 324 and the Associated General Contractors of America, Detroit and Upper Peninsula Chapters (“AGC”)] shall be applicable according to the character of the work being performed by the Employer.” (RAM Ex. 12.)

Interested Party Bricklayers and Allied Craftworkers Local 2 (“Bricklayers”) and RAM are parties to a collective bargaining agreement that runs from 2012 through May 31, 2019. (Joint Ex. 1.)

Interested Party Local 149, United Union of Roofers, Waterproofers and Allied Workers (“Roofers”) and RAM are parties to a collective bargaining agreement that is dated as of June 1, 2003 and continues in effect with changes to wages and fringe contributions. (Joint Ex. 2.)

Interested Party the Michigan Regional Council of Carpenters (“Carpenters”) and RAM are parties to a collective bargaining agreement that was effective as of June 1, 2006 and continues in effect with changes to wages and fringe contributions. (Joint Ex. 4.)

**III. A JURISDICTIONAL DISPUTE EXISTS BETWEEN THE PARTIES THAT THE BOARD MUST RESOLVE UNDER SECTION 10(k) OF THE ACT**

**A. The Requirements of Section 10(k) of the Act Are Satisfied**

Section 10(k) of the Act provides that “[w]henver it is charged that any person has engaged in an unfair labor practice within the meaning of [Section 8(b)(4)(D)], the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute.” In the present case a jurisdictional dispute exists between the parties concerning the operation of certain power driven and power generating equipment and there is no agreed upon method for the voluntary

adjustment of the dispute. Accordingly, the Board should “determine the dispute out of which RAM’s unfair labor practice charge against the Laborers was filed.

**B. A Jurisdictional Dispute Exists Between The Parties With Respect To the Operation of Certain Power Driven Equipment**

**1. Background Of Dispute - RAM’s Use of Composite Crews**

The testimony and other evidence received during the Hearing firmly established that for approximately 30 years RAM has employed “composite” crews on its vertical and building restoration projects. (Mazur, Tr., p. 122) Consistent with other witnesses, Mazur described a composite crew as “trades incorporating and working [together] toward the same end goal.” (Mazur, Tr., p. 123.) The composition of a composite crew depends on who is available and the predominance of the kind of work required on the job. (Testimony of Foreman Bruce Hooker, Tr., pp. 472-476.) Because composite crews are cross-trained on most of the skills and equipment RAM jobs require, “everybody is expected to do basically all the kinds of work that are done on a given job.” (Hooker, Tr., p. 476.) A composite crew may or not include an operator, depending upon what kind of power driven equipment is being used and the amount of time the equipment is expected to be in use on a given job. (Hooker, Tr., pp. 472-474.) To put RAM’s overall workforce in perspective, over the past three years RAM has employed between 11 and 17 Operators, 182 and 243 Laborers, 138 and 170 Bricklayers, 5 and 6 Carpenters and 6 and 21 Roofers. (RAM Ex. 5.)

**2. Background of Dispute - RAM’s Written Assignment of Certain Power Driven Equipment to the Laborers**

On November 25, 2015, RAM president Robert T. Mazur wrote to Laborers’ Business Representative Geno Alessandrini to provide a list of power driven equipment work that RAM was assigning to the Laborers “on each and every job that we will complete moving forward.”

(Local 324 Ex. 2.) Included among the work assigned were operation of Bobcats with fork, bucket or sweeping attachment, operation of forklifts, operating of shotblasting machines, operation of ride-on sweepers, cutting of brick and/or masonry block, and the building and dismantling of hydromobiles. *Id.* This letter did not constitute an assignment of new work, merely a commemoration of the kind of work laborers were already performing on RAM construction sites. Mr. Alessandrini testified that, given the nature of composite crews, the Laborers do not claim the exclusive right to perform the assigned work (Alessandrini, Tr., p. 434.) In addition to Operators and Laborers, Carpenters, Bricklayers and Roofers will also occasionally operate such power driven equipment.

**3. Local 324's Grievance and Its Funds Audit Demand and The Laborers' Threat to Force RAM to Maintain the Status Quo Regarding Work Assignments**

On or about April 20, 2018, Local 324 Business Agent Kermit Burke visited a RAM jobsite located on West Lafayette Street in Detroit (the "Old Free Press Building site") and saw a laborer operating a Bobcat. When Burke complained to RAM Director of Operations-Superintendents Michael McNab that laborers were performing operators' work, McNab, by email dated April 20, 2018, attached the November 25, 2015 letter of Assignment (Local 324 Ex. 2) and wrote, "[w]e have had the laborers historically operate this equipment for the past 30+ years." (RAM Ex. 20.) On April 30, 2018, RAM received an audit request from Chuck Nichols, auditor for Local 324's trust funds. (RAM Ex. 10.) For the first time ever in their auditing of RAM, Local 324's auditors requested information related to power driven equipment usage, making it clear that the Local 324 funds audit request was in furtherance of Local 324's demand for reassignment of work from the Laborers to Local 324. On May 3, 2018, Local 324 filed a grievance against RAM. (RAM Ex. 18.)

Although slightly different, both the AGC agreement whose terms and conditions apply to Local 324's relationship with RAM (Joint Ex. 3) and the NSA Agreement between the Laborers and RAM (Joint Ex. 5) call, in the event of a jurisdictional dispute between the unions, for the involvement of representatives of their respective International unions. Accordingly, on May 22, 2018, Geno Alessandrini wrote to Local 324 Business Manager Douglas W. Stockwell. (RAM Ex. 22.) In the letter Alessandrini advised Stockwell that the Laborers did claim Bobcat and certain other specified power driven equipment work and suggested that if Local 324 was claiming more than simply the Bobcat work at the Old Detroit Free Press Building site, "it would seem more appropriate to move immediately to the International Representative stage of the jurisdictional dispute resolution process." (RAM Ex. 22.) In response, Stockwell sent a profane text to Alessandrini in which Stockwell did not agree to call in International Representatives, but wrote, "I look forward to tis jurisdictional. [middle finger emoji] Game on my dear friend." (RAM Ex. 23.)

On May 25, 2018, McNab wrote to Alessandrini. After explaining that Local 324's grievance coupled with its Funds audit demands raised concerns that RAM might be required to pay fringe benefits twice, McNab wrote, "I will forthwith assign the work to Operators." (RAM Ex. 17.) On May 29, 2018, Alessandrini and Laborers' Secretary/Treasurer Alex Zurek wrote back objecting to RAM's proposed reassignment, concluding, "I do not believe that RAM or their customers need to experience this unnecessary disagreement in jurisdiction, and I am sure no one wants to see a [sic] work stoppages or picket lines on their jobs ... if this attack on jurisdiction continues, the Laborers have no choice but to protect our work by all methods and means." (RAM Ex. 24.) This threat falls within the language of Section 8(b)(4)(D) of the Act, 29 U.S.C. § 158(b)(4)(D) prohibits a union from "forcing or requiring any employer to assign

particular work to employees in a particular labor organization or a particular trade class or craft rather to employees of another labor organization or another trade, class or craft.”

Under pressure from their respective International Unions, Local 324 later withdrew its grievance (leaving its Funds’ audit demand in place) and the Laborers rescinded its threat of pickets and work stoppages. However, as was evident during the three days of hearing in this case, the jurisdictional dispute remains active and raw, with Local 324 claiming all of the disputed work and the Laborers, Carpenters, Bricklayers and Roofers all wanting to maintain the status quo with regard to work assignment. The withdrawal of the grievance and the rescission of the threat were made only because Local 324 and the Laborers, through their respective International Unions, are subject to the jurisdiction of the Plan for the Resolution of Jurisdictional Disputes in the Construction Industry (“the Plan”). RAM contends that it is not bound to submit to the Plan’s jurisdiction. Thus, the issue is not whether the jurisdictional dispute has been resolved – it has not. The issue is whether the Plan has jurisdiction over the dispute. If it does not, the jurisdictional dispute remains extant and the Board should resolve it through this Section 10(k) proceeding. As discussed below, it does not appear that RAM is bound to the Plan’s jurisdiction. Thus, the Board must resolve the jurisdictional dispute.

#### **4. The “Disputed Work”**

The record appears to contain no succinct description of exactly what work is in dispute. However, based on Local 324’s claims for basically all ride-on equipment operation, RAM’s and the Laborers’ acknowledgment that the operation of cranes and truck cranes are the exclusive province of Local 324-represented employees, and descriptions of the kinds of equipment RAM uses on its jobsites, the work in dispute (the “Disputed Work”) can be described as the operation

of Bobcat/skid steers, ride-on sweepers, shot blasting machines, hi-los, fork trucks and hydromobiles (water trucks).

**C. The Plan Does Not Have Jurisdiction Over RAM And, Accordingly, Does Not Have The Authority To Settle The Jurisdictional Dispute Between The Parties**

Local 324 takes the position that RAM is bound to submit any jurisdictional dispute to the Plan. As members, through their International Unions, of the Building and Construction Trades Council of the AFL-CIO, all five labor organizations are bound to submit to the Plan's jurisdiction. The only question is whether RAM has agreed to be bound by decisions of the Plan.

It is well settled Board law that "all of the parties [in the Section 10(k) proceeding] must approve and enter into a voluntary adjustment procedure in order to preclude a hearing and determination pursuant to that section." *Local 702 International Brotherhood of Electrical Workers (JRJ Excavating Company)*, 189 NLRB 929, 931 (1971). The NLRB carefully scrutinizes the agreements at issue in order to determine if the parties are truly bound by the Plan. *International Brotherhood of Electrical Worker, Local 196 (Aldridge Electric)*, 358 NLRB 737, 739 (2012).

With the exception of Local 324, none of the other Unions claim to have a contract with RAM that binds RAM to the Plan. Local 324's position is supported only by the 2006 "short form" agreement. (RAM Ex. 12.) The language of the short form agreement on which Local 324 relies states:

"JURISDICTIONAL DISPUTES – The parties hereto agree that in the event of a jurisdictional dispute with any other union or unions, the dispute shall be submitted to the Impartial Jurisdictional Disputes Board for settlement in accord with the plan adopted by the Building Trades Department of the AFL-CIO. The parties hereto further agree that they will be bound by any decision or award of the Disputes Board. There shall be no stoppage of work or slowdown arising out of any such dispute nor shall either party resort to proceedings before the National

Labor Relations Board, State Boards or State or Federal Courts before a decision is rendered by the Impartial Jurisdictional Disputes Board.”

RAM Ex. 12.

This short form agreement may have bound RAM to the late Impartial Jurisdictional Disputes Board (“IJDB”), but does not the bind it to the Plan.

The short form agreement was signed by RAM on August 21, 2006, well after the 1984 adoption of Plan by the AFL-CIO<sup>4</sup>, but makes no reference whatsoever to the Plan. The Board’s decision in *Laborers Local 383 (Industrial Turf, Inc.)*, 218 NLRB 424 (1975) is relevant. In that case the employer claimed it was not bound to IJDB jurisdiction because the controlling memorandum of agreement did not refer to the IJDB. The Board found IJDB jurisdiction because the memorandum of agreement stated:

“[I]n the event a jurisdictional dispute cannot be settled between the unions involved, then it is hereby agreed that such plan for settlement of jurisdictional disputes as is or may be adopted by the American Federation of Labor, Building and Construction Trades Department, shall be used.”

*Id.*, at 426-427 (Emphasis added).

According to the NLRB, "The new IJDB came into being on June 1, 1973. Hence we construe the words "may be adopted" in the aforementioned clause to refer to the new IJDB and its successors, and to bind the Employer and Local 469 to the new IJDB." *Id.*, at 427 (Emphasis added). Accord, *Sheet Metal Workers, Local 359 (Eft Piping)*, 217 NLRB 987, 989 (1975) ("All jurisdictional disputes ... shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure adopted in the future by the Department .... ") That or similar language is absent from Local 324’s short form agreement.

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<sup>4</sup> See Local 324 Ex. 17, cover page, which dates the Plan to June 1984.

*Sheet Metal Workers Union, AFL-CIO, Local No. 4 (Tennessee Acoustical)*, 194 NLRB 1081 (1972) is on point and controlling.<sup>5</sup> Addressing wording similar to the instant short form agreement, the NLRB rejected a claim that a newer jurisdictional plan bound the parties, explaining:

In our recent decision in [*Bricklayers, Masons and Plasterers' International Union of America, Local No. 1 (Lembke Construction Company of Colorado)*, 194 NLRB 641 (1971)]<sup>6</sup> we held that a submission to the jurisdiction of the former Joint Board embodied no automatic commitment to the subsequently established National Joint Board. Accordingly, absent evidence that the employer making the work assignment signified an intention to be bound to the new procedures, the Board will not find that an agreed upon or alternative method for the voluntary adjustment of the dispute exists. For these reasons, and as no such evidence exists in this case, we find that the dispute is properly before us for determination.

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<sup>5</sup> The relevant contract language in *Tennessee Acoustical*, at 1082 provided:

"Sub-contractor agrees to abide by decisions handed down by the National Joint Board for Jurisdictional Disputes."

\* \* \* \*

"Work Jurisdiction-The work of the Carpenters shall be all work recognized as such by the Building and Construction Trades Department, AFL-CIO, and the National Joint Board for the settlement of Jurisdictional Disputes."

<sup>6</sup> In *Lembke*, at 650, the contract provided:

"If settlement cannot be reached in this manner, then the procedural rules of the National Joint Board- for the Settlement of Jurisdictional Disputes shall be initiated at once, and both the Union and the Employers agree to be bound by all decisions and awards of record as published by the National Joint Board. It is understood that this procedure includes a process for filing of appeals against adverse decisions."

\* \* \* \*

"Nothing contained herein is intended as in infringement on the recognized jurisdiction of any other building trades union, and any jurisdiction or misunderstanding will be settled in the manner prescribed by the Building and Construction Trades Department."

*Tennessee Acoustical*, at 1082-1983 (Footnote omitted).

Here, the wording of the short form agreement is very specific and limited. It only identifies the IJDB. Unlike the applicable language in *Industrial Turf*, there is no language binding RAM to any plan “as may be adopted.” Rather, the IJDB is “the plan adopted by the Building Trades Department of the AFL-CIO.” (RAM Ex. 12.) Thus, the short form agreement only binds RAM to the IJDB, nothing more. There is no reference to another entity or successor to the IJDB. There is no evidence that RAM signified an intention to be bound to the Plan. Missing is any automatic commitment to any subsequently established jurisdictional dispute resolution authority or mechanism.

If Local 324 had wanted include IJDB's successor, such as the Plan, in the short form agreement, it could easily borrowed wording from the Constitution of the North America's Building Trades Union (NABTU)<sup>7</sup>, which provides that jurisdictional disputes between member unions: "shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure adopted in the future by the Department for the settlement of jurisdictional disputes." (Local 324 Ex. 16 at p. 28) (emphasis added). It did not! Local 324's failure to use any successor language in its short form agreement is the death knell for its claim that RAM is bound to the Plan.

There is an additional, independently sufficient reason to find that RAM is not bound to submit to the Plan's jurisdiction. The short form agreement expressly provides that the Employer “agrees to abide by the Wage Rates, Fringe Benefits, and all other terms, conditions and provisions of the current collective bargaining agreements” between Local 324 and a list of several multi-employer associations. (RAM Ex. 12.) It is undisputed that the multi-employer

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<sup>7</sup> North America's Building Trades Union is a d/b/a of the AFL-CIO' Building and Construction Trades Department. Local 324 Ex. 16, p. 1-2.

master agreement applicable to RAM is Local 324's contract with the AGC. (Joint Ex. 3.) The short form agreement provides, "It is further understood and agreed that this Agreement shall renew itself and become binding again as to all Wage Rates, Fringe Benefits, and all other terms, conditions and provisions negotiated in new applicable Master [AGC] Agreements and shall automatically be renewed for the term of the new Master [AGC] Agreement." (RAM Ex. 12) (emphasis added) Thus, the short form agreement itself provides that its "terms, conditions and provisions" shall be superseded by subsequent master or, in this case, AGC agreements. The most recent AGC agreement applicable to RAM was entered into in 2013 and expired by its terms on May 31, 2018. (Joint Ex. 3.) Section 4 of the AGC agreement contains the "terms, conditions, and provisions" applicable to jurisdictional disputes. It contains no mention of the IJDB, the Plan or any other tribunal for the resolution of jurisdictional disputes. Thus, by the very terms of the short form agreement, RAM cannot be held to be contractually obligated to submit this dispute to the Plan or any other alternate jurisdictional dispute resolution method.

#### **IV. THE AWARD OF WORK SHOULD PRESERVE THE STATUS QUO IN THE ASSIGNMENT OF THE OPERATION OF POWER DRIVEN EQUIPMENT**

##### **A. The Jurisdictional Dispute Covers The State of Michigan And Is Not Limited to a Single Jobsite**

As a preliminary matter, the Board should make its award on a State of Michigan wide basis. Normally, 10(k) awards are limited to the jobsite or sites where the unlawful conduct occurred or was threatened. *Laborers District Council of Western Pennsylvania (Paschen Contractors)*, 270 NLRB 327 (1984). There are two prerequisites for a broad, area wide award: "(1) there must be evidence that the work in dispute has been a continuous source of controversy in the relevant geographical area and that similar disputes may recur; and (2) there must be evidence demonstrating the offending union's proclivity to engage in further unlawful conduct in

order to obtain work similar to that in dispute.” *Id.* at 330, citing *Electrical Workers IBEW Local 104 (Standard Sign and Signal Co.)*, 248 NLRB 1144, 1148 (1980).

In the present case there is an abundance of evidence that the work in dispute has been a continuous source of controversy in Michigan and that similar disputes may recur.<sup>8</sup> RAM Exhibits 25, 26 and 27, attested to by RAM’s Michael McNab at TR., pp. 272 through 282, relate to earlier instances at other jobsites where Local 324 claimed Disputed Work on power driven equipment being operated by a laborer. Local 324 called as a witness, David Honaker, a former operator employed by RAM. Mr. Honaker testified that during his last year of employment with RAM (2016) he called Local 324 business agents “one to three calls a week possibly at that time” to complain about what he considered to be operator work being performed by Laborers. (Honaker, Tr., pp. 502-503.)<sup>9</sup> Local 324 Business Agent Kermit Burke testified that “for the last several years” RAM “just always [had] non-operators on equipment a lot of times.” (Burke, Tr., pp. 525-526.) According to Burke, this “was pretty much going on all the time.” (Burke, Tr., p. 526.) Local 324 Business Agent Doug Stockwell testified that Local 324 claims “Bobcats and skid steers,” ride-on sweepers,” “shot blast machines,” “compressors,” and “extended reach forklifts,” among other power driven equipment. (Burke, Tr., p. 605. ) This overlaps with the work assigned to the Laborers in Bob Mazur’s November 25, 2015 letter of assignment (Operating Engineers Exhibit 2) and which the Laborers claim. (Alessandrini, Tr., pp. 433-434. ) In withdrawing its threat to stop work or picket RAM projects (RAM Ex. 14), the Laborers were

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<sup>8</sup> Local 324’s AGC contract (Joint Ex. 3) applies to the entire state of Michigan. The Laborers’ National Specialty Agreement (NSA) (Joint Ex. 5) is a nationwide agreement.

<sup>9</sup> Notably, Honaker testified that he spent his first four years at RAM as a laborer. On cross-examination Honaker admitted that he made these complaints despite the fact that there had been no significant change in RAM’s work assignments between the time he worked as a laborer (2008-2012) and the time he worked as an operator (2012-2016). (Honaker, Tr., pp. 520-521.)

not “disclaiming the work that had traditionally or historically been assigned to it by RAM.” (Alessandrini, Tr., p. 440.) Based on this evidence, it is crystal clear that there is an on-going dispute between the Laborers and Local 324 regarding the assignment of work on certain power driven equipment.

The issue of whether there is “evidence demonstrating the offending union’s proclivity to engage in further unlawful conduct in order to obtain work similar to that in dispute” need not be reached because, as the following evidence firmly establishes, “the relevant geographical area” is Michigan:<sup>10</sup>

- Local 324’s grievance (Employer Ex. 18) does not limit Local 324’s complaint to a single jobsite. Rather, it claims that RAM “is in clear and direct violation of the terms and conditions of the Collective Bargaining Agreement” and demands that RAM “cease and desist of violations and conform to the terms and conditions of the Collective Bargaining Agreement.” (RAM Ex. 18.)
- In his May 11, 2018, email to McNab concerning the grievance, Local 324 Business Manager Douglas Stockwell made no reference to a single jobsite. Rather, Stockwell references the 2015 letter of assignment to the Laborers (Operators Ex. 2) that “at no time was it told to me as an operating engineer that was the work of the Labors [sic].” (RAM Ex. 19.) He claimed that the assignment letter was “trying to give the jurisdiction of the IUOE local 324 to another craft.” (*Id.*) Again, there is in this no limitation to a specific jobsite.
- The May 25, 2018 letter from McNab to Alessandrini purported to reassign the operation of hi/lo forklifts, Bobcat/skid steers, grad-alls, ride on sweepers, shot-

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<sup>10</sup> The quotes are from *Paschen Contractors*, 270 NLRB at 330.

blast machines, compressors, rented excavating equipment and extended reach fork lifts to Local 324 was not limited to a single jobsite, but applied to the entire geographical jurisdiction of the Laborers and Local 324, to wit, Michigan. )RAM Ex. 17.)

- The Laborers’ May 29, 2018, response and threat to engage in work stoppages and/or picketing was likewise applicable to the entire state of Michigan. RAM Ex. 24.)

The original June 18, 2018, Notice of Hearing correctly identified the dispute, providing that the hearing was to apply to “all jobs performed by Ram Construction Services of Michigan, Inc.” Formal Documents, 1(d). Without explanation for the change, the July 13, 2018, Notice of Rescheduled Hearing purported to limit the scope of the hearing to RAM’s “Detroit Free Press restoration job site located at 321 West Lafayette Blvd., Detroit, Michigan.” Formal Documents, 1(j). The dispute and the Board’s award cannot be so limited. All of the evidence introduced at the Hearing demonstrates that Local 324’s claim for Bobcat and other power driven equipment work pertains to RAM’s work throughout Michigan, the geographical territory claimed by both Local 324 and the Laborers. Further, the Laborers’ June 7, 2018 letter withdrawing the threat to picket (RAM Ex. 14) was premised on the understanding that the Plan had jurisdiction over this matter. If, as the Laborers believe, the Plan does not have jurisdiction over the dispute and if Local 324 continues with its efforts (whether by grievance or its Funds’ audit demands) to coerce RAM to reassign the work to Local 324, the Laborers will continue to “protect our work by all methods and means.” RAM Ex. 24.

On the basis of the above, both prerequisites for a broad, area wide award are met and the award should apply to all of Michigan.

**B. On The Merits, The Board Should Issue An Award Maintaining The Status Quo Regarding Power Driven Equipment Assignments**

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S.; 573, 577 (1961). “The Board’s 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.” *Laborers’ International Union of North America, Local 894 (Donley’s, Inc.)*, 360 NLRB 104 (2014) (*Donley’s I*). The factors identified in the following subheadings favor an award maintaining the status quo with respect to RAM’s assignment of specified power driven equipment in a composite crew setting.

**1. Board Certifications and Collective Bargaining Agreements**

There was no evidence presented with respect to any Board Certifications with respect to any of the five participating unions.

Unlike Local 324’s AGC Agreement, which was negotiated between Local 324 and a multi-employer association and adopted by RAM by reference, the Laborers NSA was negotiated directly between RAM and the Laborers’ International Union of North America to apply nationwide and to fit the restoration business in which RAM is principally engaged. The Laborers point to two provisions of their collective bargaining agreement to support their claim for the Disputed Work. Article I, Scope of Agreement, Section B, states, in relevant part:

“The work coming under the jurisdiction of the Union and covered by the terms of this Agreement includes all work to be performed by employees of the Employer at a site of construction, alteration, or repair, including but not limited to building restoration to include [a long list of specific kinds of restoration work, waterproofing and other tasks] as well as all work necessary or incidental to performing the Employer’s operations in a safe and efficient manner.”

(Joint Ex. 5, p. 3) (emphasis added). Article XIV, Safety and Working Rules, Section F, states:

“There shall be no inequitable minimum or maximum amount of work which an employee may be required to perform during the working day and there shall be no restrictions imposed against the use of any type of machinery, tools or labor saving devices.”

(Joint Ex. 5, p. 14) (emphasis added).

The Local 324 AGC agreement provides that “[t]he jurisdiction of the Union is recognized by the Employers to be the operation of all power driven or power-generating construction equipment used in the building or alteration of all structures and engineering works insofar as the National Labor Relations Board recognizes operation of such types of equipment as being under the jurisdiction of Operating Engineers, Firemen, Oilers, and Apprentice Engineers, rather than any other skilled trade group.” (Joint Ex. 3, p. 3.)

It is clear that neither the Laborers nor Local 324 claim all of the work that would arguably be covered by a broad reading of the language of their respective contracts. Thus, the Laborers do not claim cranes or truck cranes. (Alessandrini, Tr., p. 452.) Neither contract specifically identifies or provides specific wage rates for the operation of Bobcats, shot-blasters, hi-lows or ride-on sweepers. Local 324’s AGC agreement does specifically claim forklifts, but in their testimony at the hearing, both Business Agent Kermit Burke and Business Manager Douglas Stockwell testified only to claiming “extended reach forklifts.” (Burke, Tr., p. 556; Stockwell, T., p. 605.) In his testimony, Burke limited the types of power-driven or power-generating equipment that RAM uses and Local 324 claims to “Bobcats, forklifts, shot blasters, ride-on sweepers, compressors [and] mini-excavators.” (Burke, Tr., p. 581.) The Operators do not claim such power driven equipment as power tools, pneumatic hammers and the like. (Burke, Tr., p. 581.)

Given the fact that both contracts have language that support the respective positions of the Laborers and Local 324, this factor does not favor awarding the work to employees represented by either union.<sup>11</sup>

## **2. Employer Preference and Past Practice**

As evidenced in the November 25, 2015 letter of assignment (Local 324 Ex. 2), RAM has formally assigned the disputed work to the Laborers. However, the Laborers recognize that “they don’t necessarily perform that work exclusively.” (Alessandrini, Tr., p. 434.) In other words, given the nature of RAM’s composite crew structure the Laborers understand that, “[e]verybody does everything. Everybody gets trained on everything on the job ... It works out perfect. Everybody does everybody’s work.” (Alessandrini, Tr., p. 431.) Alessandrini testified that what the Laborers were seeking was the status quo. Thus, the employer preference and past practice is to maintain the current composite crew work arrangements without assigning the disputed equipment exclusively to Local 324.

## **3. Area and Industry Practice**

There was not much evidence of industry practice outside of RAM’s composite crew format. The Laborers introduced an exhibit that consisted of 13 letters of assignment from other employers, assigning the operation of Bobcats, water trucks and other power driven equipment to the Laborers. (Laborers Ex. 1.) Additionally, Alessandrini testified that he was familiar with other companies that used composite crews where “[e]verybody does everything, Everybody gets trained on everything. Everybody can do everything on the job.” (Alessandrini, Tr., p. 431-432.)

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<sup>11</sup> Based upon the Laborers’ understanding that the Carpenters, Roofers or Bricklayers also merely seek the maintenance of the status quo and do not assert a claim for additional work, this brief does not include an analysis of the scope of work provisions of those parties’ contracts with RAM.

Local 324 presented no evidence directly related to area and industry practice with respect to assignment of work to members of composite crews or in the restoration business in which RAM competes.

Based on the above evidence, this factor also favors maintenance of the status quo, which allows for the regular, if intermittent operation of the disputed equipment by the Laborers and other unions.

#### **4. Relative Skills and Training**

The Laborers, at their Training and Apprenticeship facility in Perry Michigan, provide training for its RAM employees “in different facets of the industry.” (Alessandrini, Tr., pp. 431-432.) A lot of the training for the kind of equipment in dispute is on the job training. (Mazur, Tr., pp. 123-124.)

Local 324 presented evidence of its training programs with the testimony of Business Manager Stockwell and the introduction of OE Exhibits 23 and 24 (Apprentice graduation requirements for “hoisting” apprentices (Local 324 Ex 23) and “civil” apprentices (Local 324 Ex 24). However, none of this evidence related to training on the disputed equipment. On cross-examination Stockwell admitted that the Local 324 training programs did not include Bobcats, shot blasters, ride-on sweepers, compressors or generators. (Stockwell, Tr., p. 665.)

On balance, there is no evidence to establish that members of either union have superior training or skills than the other.

#### **5. Economy and Efficiency of Operations**

RAM’s presented evidence that the very reason for using a composite crew on restoration projects was for the efficiency of its operations. Thus, RAM President Bob Mazur testified that using a composite crew is “more efficient because you have a lot of trades incorporating and

working towards the same end goal. There's training that's incorporated. We get younger people they get a lot of onsite training on the job, so there's a lot of facets that go into the efficiencies that we see." (Mazur, Tr., pp. 123-124.) Michael McNab testified that RAM uses composite crews because of "[t]he efficiency of the job." (McNab, Tr. p. 202.)

Foreman Bruce Hooker outlined how job efficiency was created by the selection of the men and trades that would make up a given crew:

Q. Okay. And how do you determine what trades will be represented on a concrete restoration job?

A. Usually that depends on what the nature of the project is?

Q. What are the variables that go into that?

A. A lot of the variables are means of access, what it entails. So say we have – you know, like milling, any sort of, you know, milling work I would call, you know, and have an operator on there. Or if we had a large site where it was constant mobilization up to a roof, we would have an operator down there. Or if we had a lot of hand-patching to do, we would have finishers on the job to complete that.

Q. So you determine the nature of the work that needs to be done and then determine the composit[ion] of the crew, is that –

A. Yes.

Q. That's accurate? Okay. And do the – once a crew—once guys are assigned to a particular crew, do those men usually stay on the job until the job is done?

A. Oh yeah.

Hooker, Tr., pp. 472-473.

Hooker testified that when an operator is assigned to a crew he does not spend all of his time on power equipment: "We usually, you know, have him doing some of the easier tasks, you know, sweeping, cleaning up the job site, reorganizing, just keeping everything so the job goes flowing good." (Hooker, Tr., p. 474.)

Local 324 presented no evidence that assigning the disputed work to Operators would increase the efficiency of operations.

Once again, this factor favors an award that maintains the status quo with respect to the disputed equipment.

**C. Local 324 Is Seeking To Claim Additional Work At The Expense of the Other Unions**

In situations where the employer divides the same work between different unions “[t]he Board looks at the scope of the work that each union’s members have performed: If one union seeks to expand its members’ share of the work, then it seeks not merely to preserve work, but to acquire more.” *International Union of Operating Engineers, Local 18 v. NLRB*, Case Nos. 16-1800/1969 (6<sup>th</sup> Cir. 10/31/2017) (Slip Op. p. 5),<sup>12</sup> citing *Chicago & Ne. Ill. Dist. Council of Carpenters*, 341 N.L.R.B. 543, 544-45 (2004)

The fact that Local 324 is claiming additional work came through crystal clear during the cross-examination of Business Agent Burke. Burke admitted that “more operators and less laborers that would just be a consequence of RAM fulfilling the contractual requirements that it’s your job to police.” (Burke, Tr., p.578.) Burke estimated that RAM would have to hire 8 to 10 additional operators to accede to Local 324’s demands. (Burke, Tr., p. 581.) Following the historical employment levels set forth in RAM Ex. 5, this would represent a 40 to 90 percent increase in RAM’s operator contingent.

Work acquisition is what Local 324 is demanding in this case. It seeks to expand its members’ share of the work at the expense of the other unions. Based on the Employer’s preference and past practice, economy and efficiency of operations and area and industry

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<sup>12</sup> A copy of this decision is submitted with this Brief.

practice, all of which favor the status quo, the Laborers ask for an award upholding its right to perform the work in question to the same extent it has been doing in the past.

**V. CONCLUSION**

Based on the evidence received during the Hearing and for the reasons set forth above, the Board should uphold RAM's current composite crew work assignments and not award the Disputed Work exclusively to Local 324.

Respectfully submitted,



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Dated: August 24, 2018

**CERTIFICATE OF SERVICE**

Daniel G. Helton, attorney for Charged Party Michigan Laborers' District Council, hereby certifies that on the 24<sup>th</sup> of August, 2018, he e-filed the above "Michigan Laborers' District Council Post 10(k) Hearing Brief with the National Labor Relations Board using its NLRB.gov e-filing service and on the same date served a copy of same by email sent to the following counsel of record: Robert E. Day, Attorney for Employer RAM Industrial Services, [rday@rdaypc.com](mailto:rday@rdaypc.com); David J. Selwocki, Attorney for IUOE Local 324, [dselwocki@swappc.com](mailto:dselwocki@swappc.com), Jessica L. Schuhrke, Attorney for IUOE Local 324, [jschuhrke@swappc.com](mailto:jschuhrke@swappc.com), John R. Canzano, Attorney for Bricklayers Local 2, [jcanzano@michworkerlaw.com](mailto:jcanzano@michworkerlaw.com), David Malinowski, Attorney for Michigan Regional Council of Carpenters, [dm@novaratesija.com](mailto:dm@novaratesija.com), Edward J. Pasternak, Attorney for Michigan Regional Council of Carpenters, [ejp@novaratesija.com](mailto:ejp@novaratesija.com), and J. Douglas Korney, Attorney for Roofers Local 149, [dkorney@dkorneylaw.com](mailto:dkorney@dkorneylaw.com).



ATTACHMENT TO MICHIGAN LABORERS'  
POST 10(k) HEARING BRIEF  
*IUOE Local 18 v. National Labor Relations Board*  
Sixth Circuit Court of Appeals Slip Opinion

Nos. 16-1800/1969

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

INTERNATIONAL UNION OF OPERATING )  
ENGINEERS, LOCAL 18, )  
 )  
Petitioner/Cross-Respondent, )  
 )  
v. )  
 )  
NATIONAL LABOR RELATIONS BOARD, )  
 )  
Respondent/Cross-Petitioner, )  
 )  
CONSTRUCTION EMPLOYERS ASSOCIATION; )  
DONLEY’S INC.; HUNT CONSTRUCTION, (now )  
AECOM); PRECISION ENVIRONMENTAL )  
COMPANY; CLEVELAND CEMENT )  
CONTRACTORS, INC.; B & B WRECKING )  
& EXCAVATING, INC., )  
 )  
Intervenors. )  
 )  
 )

**FILED**  
Oct 31, 2017  
DEBORAH S. HUNT, Clerk

ON PETITION FOR REVIEW  
AND CROSS-PETITION FOR  
ENFORCEMENT FROM THE  
NATIONAL LABOR  
RELATIONS BOARD

Before: SUHRHEINRICH, GRIFFIN, and KETHLEDGE, Circuit Judges.

KETHLEDGE, Circuit Judge. Two unions had contracts to do similar work for various construction companies. One of those unions—the International Union of Operating Engineers, Local 18—staged a strike, then threatened more strikes, and later filed grievances against companies that had given some of the work to members of the other union. The National Labor Relations Board eventually ordered Local 18 to stop trying to acquire work that way. Local 18 now petitions us to review that order, arguing that its members had a right to perform all the

work in dispute—even though, as its own representative said, Local 18 “gave away” that right “a long time ago.” We deny Local 18’s petition for review and grant the Board’s cross-petition for enforcement.

I.

A.

Local 18 represents operators of construction equipment in Ohio and Northern Kentucky. The union has work agreements with two groups of construction companies: the Associated General Contractors (Contractors) and the Construction Employers Association (Employers). Both agreements require the companies in those groups to hire Local 18 members to work the forklifts and skid steers (vehicles with arms for lifting and carrying) at the companies’ sites.

The Contractors and Employers have similar agreements, also covering forklift and skid-steer work, with Laborers’ International Union of North America, Locals 894 and 310. For years, certain members of the Contractors and Employers—namely Donley’s, Cleveland Cement Contractors, B & B Wrecking & Excavating, Hunt Construction, and Precision—have assigned the work mostly to Laborers, along with some other unions not involved here. They continued to do so at the sites at issue.

For example, Donley’s hired Laborers members to drive the forklifts at a site in Akron. In early 2012, however, a Local 18 representative showed up at the site, saying that he wanted Local 18 members on the forklifts or else Local 18 was “going to shut this motherf\*\*\*er down.” He went on: “We’re just trying to get back what we gave away a long time ago. You guys have been f\*\*\*ing us for 30 years.”

Soon thereafter Local 18 picketed the site. Two of its members—who were working the cranes—went on strike, closing the site for the day. Local 18 then sent Donley’s a “pay-in-lieu”

grievance, demanding the money its members would have earned on the forklifts. The sides met to resolve the grievance; when that failed, Donley's warned Laborers that the forklift work might go to Local 18. Laborers responded that its own members would strike if that happened.

Meanwhile Local 18 filed more grievances against Donley's, Cleveland Cement, B & B, Hunt, and Precision for using Laborers members on the forklifts and skid steers at various sites. Local 18 also threatened another strike, this time against the Employers, which in turn warned Laborers that its members might lose some work. Laborers again threatened to strike if they did.

B.

Donley's filed charges against Local 18 and Laborers with the National Labor Relations Board, alleging that each union had used strikes or threats to obtain work for their members—both of which are “unfair labor practices” under section 8(b)(4)(D) of the National Labor Relations Act. *See* 29 U.S.C. § 158(b)(4)(D). The Employers and the other companies later filed similar charges against Local 18 and Laborers.

Before the Board could rule on those charges, however, section 10(k) of the Act required the Board to determine whether both unions had claims to the forklifts and skid steers—and, if so, who should get to drive them. *See* 29 U.S.C. § 160(k). The Board issued two awards under section 10(k). Both times it found that Laborers and Local 18 each had valid claims to the work; both times it awarded the work to Laborers, based largely on the companies' usual practices.

Local 18 did not withdraw its grievances, but instead filed more. The Board's General Counsel responded with a complaint against Local 18 alleging the same unfair practices that the companies had alleged, plus one more: that Local 18 had violated the Act by continuing to seek payment in lieu of work that the Board had already awarded to another union.

The Board found that Local 18 had violated section 8(b)(4)(D), and thus ordered Local 18 to stop striking, threatening to strike, and maintaining grievances against the companies. Local 18 now asks us to review that order, which the Board in turn asks us to enforce.

## II.

We review the Board's order for substantial evidence, upholding the Board's conclusions if "a reasonable mind might accept the evidence as adequate to support" them. *Kellogg Co. v. NLRB*, 840 F.3d 322, 327 (6th Cir. 2016).

### A.

Local 18 contests the Board's conclusion that Local 18 engaged in unfair labor practices. Section 8(b)(4)(D) prohibits unions from using strikes or threats to force an employer to assign work to their members rather than to members of another union. *See* 29 U.S.C. § 158(b)(4)(D). The Board interprets that section also to prohibit unions from maintaining pay-in-lieu grievances after the Board has awarded the work to another union, an interpretation that no party contests here and thus one that we assume (for purposes of this case) is correct. *See Int'l Ass'n of Machinists & Aerospace Workers Dist. Lodge 160*, 360 N.L.R.B. 520, 521-22 (2014). But the Board permits such tactics when a union seeks "merely to preserve the work it previously had performed." *Int'l Ass'n of Machinists & Aerospace Workers, Dist. 190*, 344 N.L.R.B. 1018, 1020 (2005).

According to Local 18, that is all Local 18 sought to do here. Whether a union seeks to preserve work depends on the scope of work its members have done in the past. If they have exclusively performed certain work, the Board permits their union to seek to preserve the work as theirs. *See Highway Truckdrivers & Helpers, Local 107*, 134 N.L.R.B. 1320, 1321-23 (1961).

If they have never done the work, their union has nothing to preserve. *See Laborers Int'l Union of N. Am., Local 265*, 360 N.L.R.B. 819, 822-23 (2014).

The analysis is the same when employers divide the same work between different unions, as the companies did here. The Board looks at the scope of the work that each union's members have performed: if one union seeks to expand its members' share of the work, then it seeks not merely to preserve work, but to acquire more. *See Chicago & Ne. Ill. Dist. Council of Carpenters*, 341 N.L.R.B. 543, 544-45 (2004). The question is thus whether Local 18 members had ever performed the scope of forklift and skid-steer work that their union sought to secure here.

The Board found—and Local 18 does not contest—that Donley's, Cleveland Cement, B & B, Hunt, and Precision had for years assigned most of their forklift and skid-steer work to members of Laborers. Donley's, Cleveland, B & B, and Precision have done so since the 1990s; Hunt has done so since joining the Employers. They all said as much in hearings before the Board, and we recognized as much in another case born from this dispute. *See Orrand v. Hunt Constr. Grp., Inc.*, 852 F.3d 592, 594 (6th Cir. 2017). Granted, Local 18 members did similar work for Precision on some occasions, and for different Employers companies (not involved here) on others. That gave Local 18 a claim to some forklift and skid-steer work under the agreements. Yet when Local 18 began striking, threatening strikes, and filing grievances, it was laying claim to more. A Local 18 representative said as much: the union wanted to “take back” what it “gave away,” and to replace Laborers members in the process. But the record shows that, even if Local 18 members have done this sort of work under the agreements, they have never done it to the exclusion of other unions—and certainly not for the five companies involved here.

Thus, a reasonable mind could find that the evidence adequately supports the Board's conclusion that Local 18 was not trying to preserve work, but to acquire more.

Local 18 attacks that conclusion on three fronts, arguing first that the Board skipped a step in its analysis. According to Local 18, the Board should have begun by determining the "bargaining units," *i.e.*, the number of companies bound by the work agreements. If the Board considered Local 18's work for all the companies that had adopted those agreements and not just for the five involved here, Local 18 argues, the Board would have seen that Local 18's share of forklift and skid-steer work was actually quite large. But the Board did consider Local 18's work for all those companies; it simply concluded that the work did not matter. No matter how large the scope of that work was, it did not encompass the new work that Local 18 sought through its strikes, threats, and grievances. Thus, Local 18 did not use those tactics to preserve its members' existing work, but to add to it. *See Carpenters*, 341 N.L.R.B. at 545.

Local 18 argues next that, even if its members never did the disputed work, the work was "fairly claimable" under Board precedent. The Board has approved this theory in its decisions under sections 8(b)(4)(B) and 8(e), which are different provisions than the one Local 18 violated here; the Board has not applied this theory in decisions under section 8(b)(4)(D), the provision Local 18 did violate. And even in those other decisions, the Board has still looked to the scope of union work: where a company has a "practice" of assigning work to a union, that union has a fair claim to the work and so may seek to preserve it. *See Newspaper & Mail Deliverers' Union of N.Y. & Vicinity*, 298 N.L.R.B. 564, 566 (1990). If any union had such a claim here, however, it would be Laborers, not Local 18.

Local 18 also argues that the scope of union work is not in fact the ultimate question. Although the Board has said that it is, the Board has also noted that the "typical 8(b)(4)(D)

situation involves only a single employer.” *Bhd. of Teamsters & Auto Truck Drivers Local No. 85*, 224 N.L.R.B. 801, 807 (1976). Based on that statement, Local 18 says that the rules change when many employers are involved. But it overlooks the next sentence of the decision it cites: “[T]he terms of the statute do not expressly limit 8(b)(4)(D) to cases where competing groups of employees are employed by the same employer and the Board has already heard and rejected this contention.” *Id.* Local 18 does not challenge that interpretation here; and per that interpretation, unions may not use strikes, threats, and grievances to acquire work from one employer or many. Thus this argument fails.

B.

Local 18 argues finally that Laborers and the companies used unfair tactics of their own. To resolve a dispute under section 10(k), the Board first needs reason to believe that two unions have claims to the same work and that one of them has used an unfair labor practice to advance its claim. *See Int'l Union of Operating Eng'rs Local 150*, 345 N.L.R.B. 1137, 1139 (2005). Here, according to Local 18, the companies and Laborers colluded to manufacture these conditions. Their scheme, Local 18 asserts, was to sign an agreement for the work that belonged to Local 18; Laborers then threatened a strike so that the Board could hear the dispute, rule for Laborers, and thus enable the companies to avoid their obligations to Local 18. Given these “unclean hands,” Local 18 argues, the Board should never have held the 10(k) hearings in the first place.

But the Board would have had a reason to hold those hearings even if Laborers and the companies had not (allegedly) contrived one. The Board knew that two unions had claims to the same work, given Local 18’s repeated claims to that work and Laborers’s history of actually doing it. And the Board had reason to believe that one of them (namely, Local 18) had used

strikes, threats, and grievances to acquire that work—as substantial evidence would later show. The Board’s consideration of this dispute was therefore proper; as the Board concluded, Local 18 itself supplied reason enough for the 10(k) hearings. That conclusion in turn defeats Local 18’s due-process argument, which derives from Local 18’s collusion claims and thus fails with them.

\* \* \*

Local 18’s petition for review is denied, and the Board’s cross-petition for enforcement is granted.