

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

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

Case No. 07-CD-221111

and

RAM CONSTRUCTION SERVICES OF
MICHIGAN, INC.

and

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

and

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

and

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

and

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

**POST-HEARING BRIEF OF PARTY-IN-INTEREST
LOCAL 2, BRICKLAYERS AND ALLIED
CRAFTWORKERS OF AMERICA AFL-CIO**

Party-in-Interest Local 2, International Union of Bricklayers & Allied Craftworkers (BAC), AFL-CIO (“BAC Local 2”) states as follows for its Post-Hearing Brief in this matter.

First, BAC Local 2 takes no position as to whether there is an agreed-upon method to which all parties are bound with respect to resolution of this jurisdictional dispute. While BAC Local 2 is bound to the Plan for Settlement of Jurisdictional Disputes in the Construction Industry (“the Plan”) by virtue of its membership in the AFL-CIO Building and Construction Trades Department (also known as “North America’s Building Trades Unions” or “NABTU”), established Board precedent requires that all parties be bound in order to avoid a 10(k) determination on the merits of the jurisdictional dispute. The Employer, RAM Construction Services of Michigan, Inc. (“RAM”), disputes that it is bound to the Plan pursuant to the short form agreement (Employer Ex. 12) it entered into with Local 324, International Union of Operating Engineers, AFL-CIO (“IUOE Local 324”). (See Employer Ex. 1, RAM’s Position Statement re: “Plan” Coverage) Again, BAC Local 2 takes no position on that issue, which is between RAM and IUOE Local 324.

BAC Local 2 also takes no position as to whether there has been legally sufficient coercion within the meaning of the Act to invoke the Board’s jurisdiction under Section 10(k). (See Employer Ex. 3, RAM’s Position Statement re: Coercion Remains and Has Not Gone Away).

However, if the Board does reach the merits of the jurisdictional dispute, BAC Local 2’s position on the merits is that the status quo must not be disturbed. Although the jurisdictional dispute here is technically between IUOE Local 324 and the Michigan Laborers’ District Council (“Laborers”) over work assignments by RAM at the Detroit Free Press worksite in Detroit, if the Board were to issue a decision which disturbs the status quo by awarding the work in dispute -- the operation of power driven and power generating equipment -- exclusively to IUOE Local 324, the result would be a loss of work which has been historically assigned (and claimed) on a

composite crew basis to employees represented by BAC Local 2, as well as the Laborers and the other party-in-interest unions. See IUOE Ex. 4.

As the overwhelming record evidence reflects, RAM has had a longstanding practice for many years of using composite crews and assigning the work of operating various pieces of power equipment on an intermittent and sporadic basis (“hopping on and hopping off”) to members represented by BAC Local 2 as well as the Laborers and the other parties in interest. As the record reflects, not only was this the Employer’s preference, but it was the Employer’s preference because it was a more rational, efficient and cost effective way to perform its concrete restoration work. Certain pieces of equipment, such as boom trucks, warranted having a worker represented by IUOE Local 324 assigned exclusively to operate that equipment at all times. However, regarding the operation of the miscellaneous pieces of power equipment at issue in this case, such as bobcats, sweepers, hi-los, mini excavators, etc., RAM’s composite crew practice involves assigning employees represented by BAC Local 2, as well as the Laborers and the other party-in-interest unions, to hop on and hop off these pieces of equipment as the need arises during the course of the day. These pieces of equipment are typically run for only a few hours a day, so that if a Local 324 Operator were assigned exclusively to operating such equipment, the Operator would be idle most of the day. In short, the amount of time the disputed equipment is used daily simply does not warrant having an Operator exclusively assigned to operate that equipment.

The record further reflects that the employees’ relative skill and training supports the status quo practice of RAM in assigning the work in question on a composite crew basis. In addition, the record reflects that the area practice of other restoration contractors is also to use composite crews and to assign the operation of the equipment in question to the various trades and not exclusively to IUOE Local 324.

Further, with respect to BAC Local 2, the BAC Local 2/RAM CBA explicitly recognizes the composite crew concept. (See BAC CBA, Joint Ex. 1, Article XII, Section 17, p. 21)

In sum, the factors traditionally considered by the Board support a status quo award assigning the work in dispute (operation of power driven and power generating equipment at RAM's Detroit Free Press job in Detroit) pursuant to the Employer's longstanding practice of assigning such work on a composite crew basis to members represented by BAC Local 2, as well as the Laborers and the other union parties-in-interest, and not exclusively to IUOE Local 324. See, e.g., *J.A. Jones Constr. Co.*, 135 NLRB 1402 (1962).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2018, I served the foregoing paper on all parties of record by email.

By: /s/ John R. Canzano
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