

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

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 47,
Charged Party,

and

TITAN SERVICES, INC.,
Charging Party,

and

L.K. COMSTOCK NATIONAL TRANSIT, INC.,
Employer,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 12, AFL-CIO,
Party in Interest,

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 47,
Charged Party,

and

L.K. COMSTOCK NATIONAL TRANSIT, INC.,
Charging Party,

and

TITAN SERVICES, INC.,
Employer,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 12, AFL-CIO,
Party in Interest.

Case 31-CD-223008

**OPPOSITION OF INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 47, TO MOTION
OF THE PLAN FOR THE
SETTLEMENT OF JURISDICTIONAL
DISPUTES IN THE CONSTRUCTION
INDUSTRY FOR LEAVE TO FILE A
BRIEF AMICUS CURIAE**

Case 31-CD-222858

International Brotherhood of Electrical Workers, Local 47 (“IBEW Local 47”), charged party in the above-captioned matters, hereby opposes the Motion of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry For Leave to File a Brief Amicus Curiae.

The Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (“Plan”) cites two reasons for seeking leave to file its amicus curiae brief: (1) to “provide a more complete description of the Plan than that found in the briefs submitted by the parties; and (2) to explain more fully why the Board should find that all of the parties to this dispute are bound to the Plan.” Motion, at 3. Neither reason warrants granting the Plan leave to file its amicus curiae brief.

First, there is no need for a more complete description of the Plan. Indeed, the Plan’s governing documents are already part of the record. Intervenor International Union of Operating Engineers, Local 12 (“IUOE Local 12”), introduced both the Plan itself, and the Plan’s Procedural Rules and Regulations, into the record. *See* IUOE Local 12, Ex. 1 (Motion to Quash, Ex. 2).¹ Hence, the Board can analyze the Plan’s governing documents without the assistance of the Plan’s amicus curiae brief.

Second, although the Plan purports to “explain more fully” why the Board should conclude that IBEW Local 47 is bound by the Plan, it actually raises an argument that no party raised in a post-hearing brief, namely, that IBEW Local 47’s conduct manifested its intent to be bound by the Plan. Brief of Amicus Curiae, at 8-16. IUOE Local 12 – the only party in this

¹ IUOE Local 12 filed a Motion to Quash, which included a number of exhibits. The Motion to Quash, along with its exhibits, was marked at the hearing as IUOE Local 12 Exhibit 1. Thus, the Plan and the Plan’s Rules and Regulations are exhibits to, and included within, IUOE Local 12 Exhibit 1.

proceeding contending that IBEW Local 47 is bound by the Plan – failed to raise that contention in its post-hearing brief, thereby waiving the argument. Hence, the Board should decline to address an issue that has only been briefed by an amicus curiae.

Finally, the Plan’s contention that IBEW Local 47 is bound by the Plan is directly contrary to a well-established line of Board cases holding that IBEW’s “outside” locals, such as IBEW Local 47, are *not* bound by the Plan. *See, e.g., Local 876, Int’l Bhd. of Elec. Workers (Newkirk Elec. Assoc.)*, 365 NLRB No. 81 (May 19, 2017); *Int’l Bhd. of Elec. Workers, Local 196 (Aldridge Elec.)*, 358 NLRB 737 (2012); *Int’l Bhd. of Elec. Workers, Local 357 (Western Diversified Elec.)*, 344 NLRB 1230 (2005); *Int’l Bhd. of Elec. Workers, Local 44 (Utility Builders, Inc.)*, 233 NLRB 1099, 1100 (1977); *Local 542, Int’l Union of Operating Eng’rs (Pangborne & Co.)*, 213 NLRB 124, 126-27 (1974); *Local 478, Int’l Union of Operating Eng’rs (Utility Srvc.)*, 172 NLRB 1877, 1879 (1968); *Local Union 825, Int’l Union of Operating Eng’rs, AFL-CIO (Nichols Elec. Co.)*, 137 NLRB 1425, 1429 (1962). The Board should therefore decline the Plan’s request to file a brief that advances an argument directly at odds with these cases.

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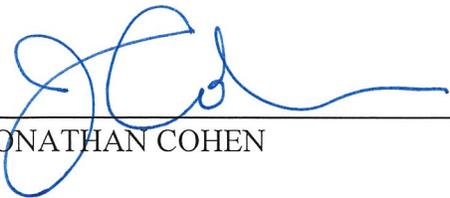
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For the foregoing reasons, IBEW Local 47 respectfully requests that the Board deny leave to the Plan to file its brief amicus curiae.

DATE: October 26, 2018

By  _____
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CERTIFICATE OF SERVICE

The undersigned, hereby certifies that on October 26, 2018, the foregoing **OPPOSITION OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 47, TO MOTION OF THE PLAN FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES IN THE CONSTRUCTION INDUSTRY FOR LEAVE TO FILE A BRIEF AMICUS CURIAE** was filed electronically with the National Labor Relations Board at *www.nlr.gov* and duly served upon the following named individuals of record by electronic mail:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 26, 2018, in Pasadena, California.



DOROTHY A. MARTINEZ