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International Brotherhood of Electrical Workers Local 47 and Titan Services, Inc. and L.K. Comstock National Transit, Inc. and International Union of Operating Engineers, Local 12, AFL-CIO.

International Brotherhood of Electrical Workers Local 47 and L.K. Comstock National Transit, Inc. and Titan Services, Inc. and International Union of Operating Engineers, Local 12, AFL-CIO.
Cases 31-CD-223008 and 31-CD-222858

June 18, 2019

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

This is a consolidated jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act. Employer L.K. Comstock National Transit, Inc. (Comstock) filed an unfair labor practice charge on June 26, 2018,¹ in Case 31-CD-222858. Employer Titan Services, Inc. (Titan) filed an additional charge in Case 31-CD-223008 on June 29. The Employers allege that International Brotherhood of Electrical Workers Local 47 (Local 47) violated Section 8(b)(4)(D) of the Act by threatening to engage in proscribed activity with an object of forcing each Employer to assign certain work to employees represented by Local 47 rather than to employees represented by International Union of Operating Engineers, Local 12, AFL-CIO (Local 12).

A hearing was held on July 18, 19, and 20 and August 20, 21, 22, and 23 before Hearing Officer Roufeda Ebrahim. During the hearing, the hearing officer denied Local 12's motion to quash the Section 10(k) notice of hearing, in which Local 12 asserted, *inter alia*, that the parties had agreed upon a method for the voluntary adjustment of the dispute—namely, the North America's Building Trades Unions (NABTU)'s Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the Plan). Thereafter, the Employers, Local 47, and Local 12 filed posthearing briefs. With the permission of the Board, *amicus curiae* Plan subsequently filed a brief arguing that the Board does not have jurisdiction to determine the dispute because all parties are stipulated to the Plan. The Employers and Local 47 subsequently filed briefs in response to the *amicus* brief.

¹ All dates are in 2018 unless stated otherwise.

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 parties stipulated that Comstock is a Delaware limited liability company engaged in the business of specialty electrical construction with an office and place of business located at 2215 El Segundo Blvd., Hawthorne, California, and that it annually purchases and receives at its Hawthorne, California facility goods valued in excess of \$50,000 directly from points outside the State of California. The parties also stipulated that Titan is an Arizona limited liability company engaged in the business of performing electrical overhead catenary systems installation with an office and place of business located at 18444 N. 25th Ave, #420, Phoenix, Arizona, and that it annually purchases and receives at its Phoenix, Arizona facility goods valued in excess of \$50,000 directly from points outside the State of Arizona. The parties further stipulated, and we find, that Comstock and Titan are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and are subject to the jurisdiction of the Board, and that Local 47 and Local 12 are labor organizations within the meaning of Section 2(5) of the Act.

II. DISPUTE

A. Background and Facts of the Dispute

Comstock is an electrical systems contractor that specializes in the installation and maintenance of overhead catenary systems (OCS) carrying power to light rail trains. Comstock is a member of the National Electrical Contractors Association (NECA), and it is and has been bound to an Outside Line Construction Agreement (Outside Line Agreement) between Western Line Contractors Chapter of NECA and Local 47 at all relevant times.² Likewise, Titan is an electrical contractor that specializes in OCS installation. At least since 2010, Titan has been signatory to the Outside Line Agreement.

Walsh/Shea Corridor Constructors (Walsh) is a general contractor in charge of the Crenshaw/LAX Transit Corridor Project (Project), which entails construction of an 8.5-mile light rail line connecting two existing light rail lines in Los Angeles, California. The Project is covered by a Project Labor Agreement (PLA) between the Los

² On March 26, 2014, Comstock signed a letter of assent binding it to the Outside Line Agreement then in effect and to successors to that agreement. The most recent agreement in the record is effective from June 1, 2017, through May 31, 2022.

Angeles County Metropolitan Transportation Authority (MTA) and the Los Angeles/Orange Counties Building and Construction Trades Council. The signatories to the PLA include certain local unions, including Local 12. Local 47 is not a signatory to the PLA. Article 12 of the PLA sets forth a procedure for resolving jurisdictional disputes. It provides that such disputes be settled pursuant to the Plan.

In early 2014, Walsh subcontracted to Comstock the performance of certain electrical systems work, including OCS installation, for the Project. On December 1, 2016, Comstock subcontracted to Titan certain OCS installation work for the Project—the work of procuring, installing, and grounding electrical poles and related components—and Titan agreed to comply with the terms and conditions of the PLA.³ On January 24, 2017, Comstock signed a letter of assent, in which it agreed to comply with all terms and conditions of the PLA for this Project. Although neither Employer has a collective-bargaining agreement with Local 12, the PLA incorporates by reference the Operating Engineers' Master Labor Agreement (MLA) between Local 12 and the Southern California Contractors Association.

Since August 17, 2017, Titan has employed three linemen and two apprentices to install electrical poles on the Project, all of whom were registered with Local 47's hiring hall. This work involved the following tasks. Titan employees first spent about an hour loading 5–8 poles onto Titan's boom truck from designated storage areas at the Project site. Specifically, foreman Brian Grant operated a crane on the boom truck to lift each pole,⁴ while a lineman and his apprentice rigged the pole and directed it onto the bed of the boom truck. Next, a Titan employee drove the boom truck along the rail from the storage area to the installation site anywhere from about 1000 feet to over a mile away. Upon arriving at the installation site, Titan employees adjusted bolts on the concrete foundation to ensure the foundation was level, set up the boom truck, and rigged a pole to prepare it to be lifted into position. Grant then operated the crane on the boom truck to pick up a pole, and other Titan employees manually directed the pole into the concrete foundation. This phase of the process took 5-10 minutes for each pole. Next, Titan employees manually grounded the pole to protect against electrocution, outages, and other hazards. Once poles were grounded, another line-

³ Brian Grant, a foreman lineman and co-owner of Titan, testified that his wife and coowner Jami Grant signed a letter of assent on April 19 but backdated it to December 16, 2016, because Walsh representative Tony Dupree asked her to do so.

⁴ Under Titan's policy, only Grant is permitted to operate a crane on Titan's boom truck.

man and his apprentice framed the poles and strung electrical wires.

On a few occasions in February 2018, Titan was unable to set up its boom truck within the confined sites where poles were to be installed.⁵ In those instances, Comstock employee Jose Sanchez, who was represented by Local 47, operated Comstock's boom truck to hoist poles.⁶ Comstock otherwise performed most of the framing and wire-stringing work, although Titan did some of that work.⁷

On March 27, Local 12 Business Representative Ken Hunt attended a pre-job conference with Walsh and certain local unions signatory to the PLA.⁸ Comstock, Titan, and Local 47 were not present. During that meeting, Hunt learned that Comstock had assigned the OCS work to Local 47. Hunt objected to any assignment of work to Local 47 and stated that "Local 12 is claiming the hoisting if there is some to be done."

On April 18, Hunt was out performing a routine job check and encountered a Titan employee operating a hydraulic boom truck to hoist a pole to load it on the back of the truck. Hunt asked the employee if he had been dispatched through Local 12's hiring hall, and the employee replied that he had been referred through Local 47's hiring hall. On April 24, Hunt filed a grievance against Titan, alleging a violation of Section 7 of the PLA, the "Referral" provision.⁹ Specifically, the grievance alleged that "[t]he operation of the hydraulic boom truck is work of the Operating Engineer and is a classification in the [MLA] under Appendix B, Group V – 'Hydraulic Boom Truck.'" The grievance demanded that Titan "pay compensatory damages to the Operating En-

⁵ Grant explained that Titan's boom truck has "A-frame" legs, while Comstock's boom truck has legs that "come straight out and set down." The design of Comstock's boom truck allowed it to fit into locations where Titan's boom truck could not.

⁶ Comstock's construction manager, Ramon Virgin, testified that Comstock employees set poles in the same manner as Titan employees as described above.

⁷ By the time the hearing opened, the Employers' employees had set 270 electrical poles for the Project. Comstock's program manager, Pratheesh Nair, testified that Titan no longer works for Comstock and that there are still 30–35 OCS poles that need to be installed on the Project. Virgin testified that Comstock plans to install the remaining OCS poles using Local 47–represented employees.

⁸ Sec. 17.1 of the PLA requires a pre-job conference to be held prior to the commencement of work. However, the March 27 pre-job conference was held about 7 months after Local 47–represented employees began performing the disputed work.

⁹ Sec. 7 of the PLA requires a contractor to perform the work covered by the PLA with individuals dispatched from a hiring hall of a union signatory to the PLA. Under the PLA, the contractor may employ up to 5 "core workers," i.e., employees who have been on its payroll for 60 of the 100 days preceding the award of the Project work, but the core workers must register with the appropriate hiring hall of the signatory union prior to commencing work.

gineers Health and Welfare Fund for all hours worked on the Project by workmen not referred through Local 12[’s] hiring hall that perform work contained under a classification in the [MLA].” Damages sought were in the amount of \$621.20 “per day, per workman,” which included \$412.88 in “[w]ages per day, per workman” and \$208.32 in “[b]enefits per day, per workman.” On April 30, Hunt called Virgin and learned that Comstock was operating its boom truck with Local 47–represented employees who had not been registered with and referred from Local 12’s hiring hall. Based on this conversation, Local 12 filed an identical grievance against Comstock.

The parties could not resolve the grievances at a step-one grievance meeting. At step-two grievance meetings with each Employer on June 6, Hunt reminded them of his earlier statement at the pre-job conference that he “made a claim to this hoisting job” and “asked Local 47’s work assignment to be removed from that and all future.” In response, the Employers’ representatives maintained that they had a right to assign the work to Local 47, a union not signatory to the PLA, on the ground that Section 2.4.8 of the PLA excluded the work from its coverage.¹⁰ Local 47’s representatives also defended the work assignment by insisting that “Performance Requirements” for the Project—which were included in the contract between the MTA and Walsh—required that the OCS work be performed by “experienced linemen,” a classification listed only in the Outside Line Agreement (to which Local 47 is signatory).

On June 19, Local 47 Business Manager Patrick Lavin sent substantially identical letters to Titan and Comstock. The letters noted Local 12’s grievances against each Employer related to “assigning the operation of a hydraulic boom truck to members of [Local 47] instead of Local 12,” and advised that “if you reassign [the disputed work] to Local 12, Local 47 will take immediate economic action, including withholding labor, picketing, or other similar action, to ensure the proper assignment of work to Local 47.”¹¹ Based on these letters, Comstock

¹⁰ Sec. 2.4.8 of the PLA states in part: “This Agreement shall not apply to . . . those items excluded by the National Electrical Code (NFPA 70) identified projects as ‘Not Covered’ under Article 90.” Nair testified that installation of OCS, which includes the disputed work of hoisting electrical poles for OCS, falls within NFPA 70, Article 90’s reference to “[i]nstallation of railways for . . . distribution of power used exclusively for operation of rolling stock.”

¹¹ Lavin testified that before sending the letter to Titan, he had conversations with Titan’s owners Jami Grant and Brian Grant (separately) about Local 12’s grievance against Titan. Lavin testified that he told them to “throw away the grievance” because the work is “the property of Local 47.” Lavin denied ever discussing with the Grants whether or not Local 47 would take economic action or picket. Brian Grant testified that neither he nor his wife had any conversation with Lavin about the letter.

and Titan filed unfair labor practice charges on June 26 and 29, respectively, alleging that Local 47 had made a threat in violation of Section 8(b)(4)(D) of the Act.

On June 29, Terry George, director of jurisdiction for the International Union of Operating Engineers (IUOE), filed a notice of violation with Plan Administrator Richard Resnick, alleging that Local 47’s threat of economic action and Comstock’s subsequent Board charge constituted “impediments to job progress” in violation of the Plan. The notice of violation requested that Comstock be directed to “resolve any jurisdictional dispute” in accordance with the Plan.¹² That same day, Resnick wrote to International Brotherhood of Electrical Workers (IBEW) President Lonnie Stephenson and Comstock counsel Christopher Smith, instructing the parties to cease the alleged violations and process the jurisdictional dispute through the Plan. Shortly thereafter, Stephenson informed Resnick that “[i]t is the position of the IBEW that outside line locals do not belong to the local building trades councils, and the IBEW does not pay per capita to [NABTU]. Therefore, it does not fall under the jurisdiction of the Plan.”¹³ Resnick subsequently selected an arbitrator, who issued an interim ruling on July 12 that all the parties were bound to the Plan, despite Local 47’s status as an “outside” local.¹⁴

B. Work in Dispute

The notice of hearing described the disputed work as “[t]he operation of the hydraulic boom truck when it is hoisting material in the Crenshaw/LAX transit corridor project in Los Angeles, California.” At the hearing, the parties stipulated that the work in dispute did not include the driving of the boom truck or use of the boom truck to string wire to the installed poles. In its post-hearing brief, Local 12 further specifies the disputed work as “the operating of the hydraulic boom truck when it is hoisting material, specifically steel, hollow poles, on the Project.”¹⁵

¹² On July 2, George filed a similar notice of violation with Resnick relating to Titan.

¹³ Pursuant to Art. 26, Sec. 4 of the IBEW Constitution, “outside” locals have jurisdiction over the “operation, maintenance and repair of equipment owned or operated by utility employers[;] [a]ll electrical construction work outside of isolated plants and the property lines of any given property[;] and a]ll line work consisting of . . . concrete or metal . . . poles or towers, including wires, cables or other apparatus supported therefrom.” In sum, “outside” IBEW locals perform work outside buildings. See *Local 181, Operating Engineers (Service Electric Co.)*, 146 NLRB 483, 485 fn. 3 (1964).

¹⁴ IBEW and IUOE appeared at the arbitration hearing, with the former contesting the Plan’s jurisdiction over Local 47. Local 47 did not participate.

¹⁵ The Employers argue, in their posthearing brief, that the disputed work involves only the hoisting of the OCS poles necessary to set the poles into their concrete foundation. However, Local 12’s grievance

We find, based on the record, that the work in dispute is the operation of the hydraulic boom truck by the Employers when it is hoisting steel, hollow electrical poles in the Crenshaw/LAX Transit Corridor Project in Los Angeles, California.

C. Contentions of the Parties

Local 12 contends that the notice of hearing should be quashed on several grounds. First, Local 12 contends that it has not claimed the work in dispute under the rationale of *Laborers (Capitol Drilling Supplies)*, 318 NLRB 809 (1995). According to Local 12, it did not seek to have the work in dispute reassigned from Local 47–represented employees to Local 12–represented employees; it merely filed contractual grievances against the Employers to obtain compensatory damages for breaches of the Referral provisions in the PLA. Along these lines, Local 12 argues that the grievances were matters of contractual work preservation, not claims for disputed work cognizable under Section 10(k). Second, Local 12 argues that Local 47’s threats to take economic action were not genuine. Third, Local 12 argues that the parties have agreed upon a method for the voluntary adjustment of the dispute. Alternatively, Local 12 asserts that if the notice of hearing is not quashed, the disputed work should be awarded to employees it represents.¹⁶

Amicus Plan, like Local 12, argues that the Board lacks jurisdiction to determine the dispute under Section 10(k) because all parties here—the Employers, Local 47, and Local 12—are bound to resolve the jurisdictional dispute through the procedures of the Plan. The Plan argues that both Local 12 and the Employers have agreed to comply with all the terms of the PLA, including the requirement that jurisdictional disputes be resolved pursuant to the Plan, and Local 12 complied with the PLA by submitting the jurisdictional dispute to the Plan. Amicus Plan also argues that Local 47 is bound to the PLA’s requirement to utilize the Plan for resolution of jurisdictional disputes through its conduct manifesting an intent to abide by the terms of the PLA.

The Employers and Local 47 contend that the Board is authorized to determine the merits of this jurisdictional dispute. They argue that there are competing claims for the work in dispute, and that there is reasonable cause to

believe that Section 8(b)(4)(D) of the Act has been violated in light of Local 47’s threats to take economic action against the Employers if the hoisting work were to be reassigned to Local 12. They further argue that because Local 47, as an “outside” local, is neither stipulated to the Plan nor party to any agreement binding it or its members to the Plan, it is not the case that all parties have agreed on a method for the voluntary adjustment of the dispute. The Employers additionally contend that although they are parties to the PLA, even they are not bound to resolve the instant dispute under its terms because the PLA (and hence the incorporated Plan) specifically excludes OCS work from its coverage. In their response to the brief of amicus Plan, the Employers and Local 47 also argue that none of Local 47’s conduct manifested an intent to be bound to the PLA and, in turn, to the Plan’s dispute resolution program.

On the merits, the Employers and Local 47 assert that the work in dispute should be awarded to employees represented by Local 47 based on the following factors: collective-bargaining agreement, employer preference, current assignment, past practice, area and industry practice, relative skills and training, and economy and efficiency of operations.

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. This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work and that a party has used proscribed means to enforce its claim to the work in dispute. Additionally, there must be a finding that the parties have not agreed on a method of voluntary adjustment of the dispute. *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005). On this record, we find that this standard has been met.

1. Competing claims for work

We find reasonable cause to believe that both Unions have claimed the work in dispute for the employees they respectively represent. Local 47 has claimed the work by its June 19 letters objecting to any assignment of the operation of a hydraulic boom truck to Local 12–represented employees. Local 47 Business Manager Lavin also directly claimed the disputed work by telling Titan’s owners that the work belonged to Local 47. In addition, Local 47’s “performance of the work indicates that [it claims] the work in dispute.” *Sheet Metal Workers Local 54 (Goodyear Tire & Rubber Co.)*, 203 NLRB 74, 76 (1973); see also *Operating Engineers Local 513 (Thomas Industrial Coatings)*, 345 NLRB 990, 992 fn. 6

against Titan was filed after Hunt’s encounter with a Titan employee who was hoisting a pole to load it on the back of the truck. At the hearing, Local 12 counsel also declined to limit the disputed work to the hoisting work involved in placing the poles on their foundation.

¹⁶ The entirety of Local 12’s argument on this point consists of one conclusory sentence: “If the Board deems it necessary to evaluate the merits of this dispute then [the] work in question should be awarded to members of Local 12, based on the 10(k) factors.” (Br. at 32.) Local 12 does not attempt to explain how those factors support assigning the disputed work to employees it represents.

(2005) (citing *Laborers Local 79 (DNA Contracting)*, 338 NLRB 997, 998 fn. 6 (2003)).

We also find, despite its claims to the contrary, that Local 12 has claimed the disputed work. As recounted above, Local 12 Business Representative Hunt made an oral demand for the disputed work at the step-two grievance meetings with each Employer. Local 12's claim for the disputed work is also demonstrated by the argument in its post-hearing brief that the MLA's prevailing wage rates "classify the work in dispute as Operating Engineers." Finally, Local 12 has filed pay-in-lieu grievances against each Employer alleging contract violations for their failure to use employees referred by Local 12 to perform the disputed work. The Board has long held that such pay-in-lieu grievances are essentially demands for disputed work. See *Operating Engineers Local 18 (Donley's, Inc.)*, 360 NLRB 903, 906 (2014); *Laborers (Eshbach Bros., LP)*, 344 NLRB 201, 202 (2005).¹⁷

Moreover, we find no merit in Local 12's argument that the instant proceeding involves a contractual dispute over the preservation of work for employees it repre-

¹⁷ We reject Local 12's argument that its pay-in-lieu grievances are materially distinguishable from other pay-in-lieu grievances that have been found to be claims for work. Local 12 argues that it has sought only compensatory damages to be paid to the Operating Engineers Health and Welfare Fund, as specified in the MLA for violations of the referral provisions, not the reassignment of the work from Local 47-represented employees to Local 12-represented employees, and that the Employers may employ Local 47 members as their "core workers" so long as they are dispatched through Local 12's hiring hall. However, regardless of the identity of the intended recipient of the compensatory damages or the absence of an express request to reassign the work to employees Local 12 represents, the fact remains that the grievances were premised on Local 12's asserted contractual right to be paid for the disputed work. Such grievances support a finding of a claim for the work, regardless of whether Local 12 sought to perform the work itself (in addition to payment for the work). See *Roofers Local 30 v. NLRB*, 1 F.3d 1419, 1427 (3d Cir. 1993) (attempted distinction "between seeking the work and seeking pay for the work is ephemeral").

We further reject Local 12's argument that it made no claim to the disputed work under *Capitol Drilling*, above. Contrary to Local 12's assertion, the Board in *Capitol Drilling* did not quash the notice of 10(k) hearing just because the union alleged contractual violations. Instead, the Board found that because the union's grievance was solely against a general contractor, not a subcontractor who had authority to assign the work, there was no competing claim for the work being performed by employees of the subcontractor. See *Capitol Drilling*, 318 NLRB at 810-812. Here, Local 12's grievances were directed at the subcontractors—Comstock and Titan—that had assigned the disputed work to employees represented by Local 47, and the grievances expressly asserted that "[t]he operation of the hydraulic boom truck is work of the Operating Engineer" under the MLA. Accordingly, this case presents a traditional jurisdictional dispute in which two unions have contracts and each union claims that its contract covers the work at issue. See, e.g., *Carpenters Southeast Missouri District Council (International Riggers)*, 306 NLRB 561, 563 (1992); *Carpenters Los Angeles Council (Swinerton & Walberg)*, 298 NLRB 412, 413-414 (1990).

sents, rather than a jurisdictional work dispute within the scope of Section 10(k). The record shows that Local 47-represented employees have been performing the disputed work for the Employers since August 2017. While Local 12 has dispatched hydraulic boom truck operators to perform the hoisting of materials other than OCS poles on the Project, it is undisputed that Local 12 has never performed the work in dispute for the Employers. Thus, the grievances seek work acquisition, not work preservation. The Board has found that these types of claims are appropriately resolved through a 10(k) proceeding. See *Electrical Workers, Local 48 (Kinder Morgan Terminals)*, 357 NLRB 2217, 2218-2219 (2011), and cases cited there.¹⁸

2. Use of proscribed means

We find reasonable cause to believe that Local 47 used means proscribed by Section 8(b)(4)(D) to enforce its claims to the work in dispute. As noted above, on June 19, Local 47 sent letters to the Employers, threatening to "take immediate economic action, including withholding labor, picketing, or other similar action, to ensure the proper assignment of [the disputed work] to Local 47." The Board has long considered such threats to be a proscribed means of enforcing claims to disputed work. See, e.g., *Washington & Northern Idaho District Council of Laborers*, 366 NLRB No. 161, slip op. at 3 (2018); *Laborers Local 1184 (High Light Electric)*, 355 NLRB 167, 169 (2010).

We find no merit in Local 12's assertion that "conversations between Local 47's Business Manager and the Contractors" indicate that Local 47's threat was not "genuine." Local 47 Business Manager Lavin testified that he spoke with Titan's owners, but he denied that he discussed with them taking economic job actions or picketing. Titan owner Brian Grant also testified that neither he nor his wife (Titan's co-owner Jami Grant) had conversations with Lavin about the letter in which Local 47 threatened economic action. In addition, there is no evidence that Lavin had any conversation with Comstock. "In the absence of affirmative evidence that a threat to take proscribed action was a sham or was the product of collusion, the Board will find reasonable cause to believe that the statute has been violated." *Laborers Local 271 (New England Foundation Co.)*, 341 NLRB 533, 534-535 (2004). There is simply no evidence on this record that Local 47's written threats were

¹⁸ *Theatrical Stage Employees Union Local 2 IATSE*, 366 NLRB No. 123 (2018), cited by Local 12, is distinguishable. The employer in that case created a work-preservation dispute by reassigning work historically performed by one group of employees to another group of employees. In contrast, the work in dispute in this case has not previously been performed by employees represented by Local 12.

the result of collusion with the Employers or were otherwise not genuine.

3. No voluntary method for adjustment of dispute

We further find, in agreement with the Employers and Local 47, that there is no agreed-upon method for voluntary adjustment of the dispute to which all parties are bound. “It is well settled that all parties to the dispute must be bound if an agreement is to constitute an agreed method of voluntary adjustment.” *High Light Electric*, above at 169 (internal quotations omitted). The Board carefully scrutinizes the agreements at issue in order to determine if the parties are bound. *Id.*

Local 47 claimed the work under the Outside Line Agreement with the Employers, and that agreement does not contain any provision binding Local 47 to the Plan. In addition, although the PLA incorporates the Plan, Local 47 is not signatory to the PLA. While Local 47 is affiliated with the IBEW, which is bound to the Plan through its affiliation with the NABTU, Local 47 Business Manager Lavin testified that Local 47 is an “outside” local, that “outside” IBEW locals are not bound to the Plan, and that Local 47 is not part of NABTU. In similar circumstances, the Board has repeatedly found that that an “outside” local of the IBEW was not bound to the procedures of the Plan. See *Local 876, International Brotherhood of Electrical Workers (Newkirk Electric Associates)*, 365 NLRB No. 81, slip op. at 3 (2017), and cases cited there.

Amicus Plan argues that, regardless of any exemption from the Plan enjoyed by “outside” local unions in the past, Local 47 bound itself to the Plan by engaging in conduct manifesting its intent to abide by the terms of the PLA, which incorporates the Plan. Specifically, the Plan asserts that Local 47 performed work covered by the PLA, a Local 47 attorney and a Local 47 representative attended the grievance meetings, and Local 47 was represented by an IBEW representative at the arbitration hearing. Contrary to the Plan’s argument, we find that the cited conduct fails to establish an implied agreement to be bound to the PLA.

To begin, the Plan cites no Section 10(k) precedent where the Board has held a union to the terms of a collective-bargaining agreement merely because it performed work arguably covered by that agreement, and we see no reason to do so in this proceeding. The work at issue was covered by the Outside Line Agreement, was assigned to Local 47 members by employers that were signatory to that agreement, and was the kind of work traditionally performed by IBEW linemen. In these circumstances, we find that Local 47 did not manifest assent to the PLA by performing the disputed work even assuming the PLA also covers that work (an issue the

parties contest). Further, while Local 47 participated in the grievance meetings that were held in accordance with the PLA, it invoked the “Performance Requirements” in Walsh’s contract with the MTA, not the PLA, to support the Employers’ assignment of the disputed work to employees it represents. Local 47 never filed a grievance under the PLA nor expressly agreed to be bound by the results of the PLA’s grievance process. We find that Local 47’s limited participation in the meetings regarding Local 12’s grievances against the Employers did not signal an intent by Local 47 to be bound by the result of the grievance procedures set forth in the PLA. *Cf. Sheet Metal Workers Local 420 (Rusco Building Systems)*, 198 NLRB 1207, 1209 (1972) (holding that a minimal degree of cooperation, such as replying to the Joint Board’s request for information, is insufficient to establish that the employer agreed to be bound to the Joint Board). Neither is the participation of the IBEW at the arbitration hearing sufficient, under the circumstances, to establish that Local 47 is bound to the Plan. *Cf. Newkirk Electric Associates*, above, slip op. at 4 (holding that IBEW “outside” local was not bound to the Plan despite IBEW President’s letter advising local to comply with the Plan administrator’s request to withdraw its threat against the employer). As noted above, Local 47 did not participate in the July 12 arbitral hearing, and there is no indication that it agreed to be bound by its results. See *High Light Electric*, above at 169 (arbitrator’s decision did not bind an employer that was not a party to the proceeding and did not agree to be bound by its results). On these facts, we find that Local 12 has not established that Local 47 is bound under the Plan.¹⁹

Based on the foregoing, we find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and there is no agreed-upon method for the voluntary adjustment of the dispute. Accordingly, we deny Local 12’s motion to quash the notice of hearing, and we find 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 Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577–579 (1961). The Board has held that its determination in a jurisdictional

¹⁹ We find it unnecessary to decide whether the Employers were bound to resolve this particular jurisdictional dispute under the Plan—i.e., whether Sec. 2.4.8 of the PLA excludes the disputed work from the PLA’s (and the Plan’s) coverage. All parties to the dispute must be bound if an agreement is to constitute an agreed-upon method of voluntary adjustment, *High Light Electric*, above at 169, and we have found that Local 47 is not bound to the Plan.

tional 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. Board certifications and collective-bargaining agreements

The parties stipulated that the Employers are not failing to conform to an order or certification of the Board determining the bargaining representative for the employees performing the work in dispute. However, both Local 12 and Local 47 argue that their respective collective-bargaining agreements with the Employers entitle the employees they represent to perform the disputed work.

As noted above, the Employers are bound to the Outside Line Agreement with Local 47. The Outside Line Agreement covers “[a]ll outside work on electrical transmission lines, distribution lines, catenary and trolley facilities, switch yards and substations,” including “[p]ole line construction work,” work related to installation of “steel or metal structures used for the purpose of carrying electrical wires, conductors or equipment,” and “[i]nstalling and maintaining the catenary and trolley work.” It also covers “the handling and operating of all equipment . . . used to move, raise or place materials used in the outside branch of the Electrical Industry.” Finally, it includes the classification of Journeyman Lineman, which is defined to include “men operating . . . trucks equipped with . . . hydraulic mounted booms and similar equipment.”

On the other hand, as indicated above, the Employers dispute Local 12’s contention that the PLA encompasses the disputed work. Assuming without deciding that the disputed work is not excluded from the PLA, Local 12’s MLA, which is incorporated into the PLA, sets forth a prevailing wage classification for “Hydraulic Boom Truck” under the Appendix B of the MLA.

“In interpreting collective-bargaining agreements, the specific is favored over the general.” *Steelworkers Local 392 (BP Minerals)*, 293 NLRB 913, 914–915 (1989). Both agreements can be fairly read to include the disputed work. However, Local 47’s contract covers not only all work related to the installation of OCS systems but also the operation of hydraulic boom trucks by Journeyman Linemen. Because Local 47’s contract describes its jurisdiction with greater specificity than does Local 12’s contract, we find that this factor favors awarding the work to employees represented by Local 47.

2. Employer preference, current assignment, and past practice

Titan’s owner Brian Grant testified that Titan prefers to assign, and has assigned, the work in dispute to employees represented by Local 47. Comstock’s program manager Ramon Virgin testified that Comstock assigned the disputed work to Local 47–represented employees and prefers that the work continue to be performed by those employees. In addition, the Employers’ representatives testified that the Employers have assigned work similar to the disputed work to employees represented by Local 47 at other projects in Southern California and that the Employers have never used employees represented by Operating Engineers to perform work of the kind in dispute. Therefore, we find that this factor favors an award of the disputed work to employees represented by Local 47.

3. Area and industry practice

The Employers and Local 47 presented evidence that area and industry practice supports an award of the disputed work to employees represented by Local 47. A representative of Mass Electric Construction Co. testified that its employees represented by Local 47 have been installing poles as part of an OCS system for the MTA’s light rail line in Southern California. Local 47 Business Manager Lavin testified that since 2004, Local 47–represented employees have installed OCS poles for light rail systems. Grant testified that Titan used IBEW–represented linemen to install OCS poles for light rail projects in San Jose, San Francisco, Sacramento, and San Diego, California; Seattle, Washington; and Portland, Oregon.

On the other hand, there is no evidence that Local 12–represented employees have operated hydraulic boom trucks to hoist electrical poles for OCS. Local 12 relies primarily on referral request forms to demonstrate area practice. The Board has rejected such forms as inconclusive because they do not describe the actual work involved or the related facts and circumstances surrounding the work. See, e.g., *Laborers’ International Union of North America, Local 860 (Ballast Construction, Inc.)*, 364 NLRB No. 126, slip op. at 5 fn. 8 (2016). Local 12 Business Representative Hunt’s testimony that he observed Local 12–represented employees operating a hydraulic boom truck similarly fails to establish a clear area practice with regard to the disputed work. Hunt admitted that the incident occurred after he filed the grievances against the Employers, and the record is unclear how long the employees have performed the work. Besides, Hunt acknowledged that those employees were performing the work to install street lights, not OCS. According-

ly, we find that this factor favors an award of the work in dispute to employees represented by Local 47. See *Carpenters Local 171*, 207 NLRB 406, 409 (1973) (The Board is “reluctant to disturb area practice in making our [Section 10(k)] awards absent some compelling reason.”).

4. Relative skills and training

Both Local 47 and Local 12 presented evidence that the employees each represents possess specific skills and training relevant to the performance of the disputed work. Local 47 is party to a joint labor-management apprenticeship training program administered by the IBEW/NECA California/Nevada Joint Apprenticeship Training Committee. The apprenticeship program is a three-and-half-year or 7000-hour program and offers courses on mobile crane operation, which includes training to operate a hydraulic boom truck. At the conclusion of the course, apprentices who pass an exam are certified by the National Commission for the Certification of Crane Operators (NCCCO). All of the Employers’ boom truck operators, who are represented by Local 47, possess an NCCCO certification.

Similarly, Local 12 is also party to a joint labor-management apprenticeship training program administered by the Operating Engineers Training Trust (OETT). The apprenticeship program is a three-year program and offers courses on mobile crane operation. At the conclusion of the course, apprentices who pass an exam receive a crane certification from the Operating Engineers Certification Program (OECF). Larry Hopkins, Director of Training for OETT, testified that both NCCCO and OECF certifications satisfy California’s requirement that all hydraulic boom truck operators be certified by an accredited certifying entity.

The Employers and Local 47 argue that Local 47–represented employees have superior skills and training to perform the disputed work because they were trained to work in a high-voltage environment.²⁰ However, Hopkins testified that OETT also provides apprentices with training on how to operate cranes around electrical lines and infrastructure. Based on the foregoing, we find that this factor does not favor awarding the work to either group of employees.

5. Economy and efficiency of operations

The Employers presented evidence showing that it is more efficient and economical to assign the disputed work to employees represented by Local 47. As indicat-

ed above, the disputed work is intermittent. The employees perform the disputed work only during the first few hours of the workday, and they spend only 5–10 minutes loading and setting each pole. During the rest of the workday, they perform other tasks related to OCS installation. Grant testified that if an employee represented by Local 12 were to be used to perform the hoisting work, which is the only portion of the OCS installation work Local 12 claims, he (Grant) would have to stand around doing nothing while a Local 12–represented employee operated the hoist, and that the Local 12–represented employee would be idle when Local 47–represented linemen performed other aspects of OCS installation work. Grant also testified that Local 12–represented employees do not perform the additional tasks related to electrical work. Therefore, we find that this factor favors an award of the disputed work to employees represented by Local 47. See, e.g., *Electrical Workers Local 71 (Thompson Electric, Inc.)*, 362 NLRB 1176, 1180 (2015) (Electrical Workers–represented employees performed disputed work only 25 or 30 percent of the time, and performed other tasks not performed by Operating Engineers–represented employees the rest of the time); *R&D Thiel*, 345 NLRB at 1141 (considering additional costs associated with one group of employees sitting idle while another group works).

CONCLUSION

After considering all the relevant factors, we conclude that employees represented by Local 47 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements; employer preference, current assignment, and past practice; area and industry practice; and economy and efficiency of operations. In making this determination, we award the work to employees represented by Local 47, not to that labor organization or its members. Our determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

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

Employees of L.K. Comstock National Transit, Inc. and Titan Services, Inc. represented by International Brotherhood of Electrical Workers Local 47 are entitled to perform the operation of the hydraulic boom truck by the Employers when it is hoisting steel, hollow electrical poles in the Crenshaw/LAX Transit Corridor Project in Los Angeles, California.

²⁰ In contending that its members receive superior training, Local 47 references Hopkins’ testimony that OETT does not train an apprentice to operate a hydraulic boom truck on rails. However, the disputed work does not include driving the truck.

Dated, Washington, D.C. June 18, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD