

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25**

**STERETT CRANE & RIGGING, LLC**

**and**

**Case 25-CA-237121**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 181, a/w INTERNATIONAL  
UNION OF OPERATING ENGINEERS, AFL-CIO**

**RESPONDENT'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE**

Comes the Respondent, Sterett Crane & Rigging, LLC, by undersigned counsel, and submits this brief in support of its defense to the Charges filed herein.

**INTRODUCTION**

At first glance this case appears to involve some form of malicious intent to withhold relevant information. However, that is far from the truth of the matter. What this case is really about the Union lashing out on unfounded perceptions that it has been wronged and taking a very litigious approach to the matter designed to intimidate and/or punish its contractual counterparty and other parties that have no contractual obligations. The record and exhibits entered into evidence at the November 7<sup>th</sup>, 2019 hearing require dismissal of the outstanding charges levied against Sterett.

The underlying matter involved a dispute between the parties concerning the scope of work covered by the collective bargaining agreement (known as the "Kentucky Building Agreement or KBA") between the International Union of Operating Engineers, Local 181, a/w International Union of Operating Engineers, AFL-CIO (Charging Party or Union) and The Western Kentucky Construction Employers Association, Inc. (the Association). Sterett Crane & Rigging, LLC (Respondent or Sterett) is a Non-Member Contractor who entered into an Acceptance of Agreement (Me-Too Agreement) relating to the KBA.(G.C. ex. )

The Union maintains that Sterett violated and continues to violate Sections 8(a)(1) and (5) of the Act by failing to provide information that is necessary for, and relevant to, the Union's

performance of its alleged duties as the exclusive collective-bargaining representative or has delayed providing such necessary and relevant information in an unreasonable matter. Review of the facts as developed through the testimony at the hearing show neither charge has merit and require dismissal of the charges against Sterett.

The Union has failed to conduct business related to this dispute in a reasonable manner. The record clearly shows prompt and good faith efforts to reply to the Union on behalf of Sterett. Below is a brief timeline of the initial events of this matter for reference.

#### **Timeline**

**January 21, 2019 – Union representative Carl Ray Dodge received a call concerning Jamon Spore disassembling a crane in Hopkinsville, Kentucky.**

**January 22, 2019 – Union representative Carl Ray Dodge notifies Sterett that the Union was filing a grievance. (G.C. ex. 6)**

**January 23, 2019 – Sterett responds to Union's grievance letter. (G.C. ex. 7)**

**January 24, 2019 – Union representative Michael Haynes responds to Sterett. (G.C. ex. 8)**

**January 31, 2019- Sterett responds to Union letter. (G.C. ex. 9)**

**February 28, 2019- Attorney for Union sends demand letter to Sterett. (G.C. ex. 10)**

**March 1, 2019 – Sterett responds to Union attorney letter. (G.C. ex. 11)**

**March 2, 2019- Union files Charges with NLRB (G.C. ex. 1h)**

**March 4, 2019 – Attorney for Union letter to Sterett. (G.C. ex. 12)**

**March 8, 2019 – Sterett letter to attorney for Union. (G.C. ex. 13)**

**June 12, 2019- Grievance Hearing.**

**June 14, 2019 – Date of Grievance Hearing board's results.**

**June 15, 2019 – Supplemental disclosure of supplemental information requested at hearing.**

The NLRB complaint was filed on March 4<sup>th</sup>, 2019, the business day following Sterett's request to the Union to provide clarification of what provisions of the KBA prohibited Mr. Spore from performing work as an Assembly/Disassembly director pursuant to OSHA requirements to which the Union has refused and continues to refuse to answer. The Union's charges were also

filed the day after Sterett had informed the Union that it would be requesting a grievance hearing within the next 48 hours. In other words, Sterett had already requested a hearing be held on the grievance on or before March 7<sup>th</sup>, 2019. This record does not support the Union's claims of interference. The communications between the parties are clear despite the Union's threats and attempts to escalate the dispute by alleging unfounded charges (such as the interference charge which was later dismissed). The subsequent delay in having the hearing was no fault of Sterett. The Union's only witness testified the Association, not Sterett, were responsible for the delay in scheduling the Grievance Hearing. (See Transcript page 53 line 13)

### **REQUESTS AND RESPONSIVE MATERIAL**

Respondent believes that it produced necessary and relevant information relating to the dispute and is being harassed with the Union's continued refusal to follow the terms and procedures of the KBA. At no time has Sterett, in writing or otherwise, failed or refused to furnish the Union with information that is necessary or required by the Union to fulfill any legitimate purpose under the KBA. In the alternative, Sterett requested clarification on what the alleged dispute the Union claimed was and provided detailed and accurate information once the subject matter of dispute was defined. (See G.C. ex. 11) Below each request is addressed as of the present time.

1. The identity of the contractor on the Hopkinsville jobsite that respondent had previously referred to, along with items such as correspondence and contracts involving that contractor.

**RESPONSIVE MATERIAL:** Copies of "bare crane" rentals between Sterett Equipment, a non-member and non-party to the KBA to two Contractors on the Hopkinsville job.

2. The same information between Respondent and Sterett Equipment.

**RESPONSIVE MATERIAL:** This matter was explained in detail at the June 12<sup>th</sup> Grievance Hearing. To summarize, Sterett Equipment had entered two "bare crane" rental agreements which were provided to the Union at the Grievance Hearing and again by email on

June 15<sup>th</sup>, 2019. Sterett explained that the renter of the cranes was responsible for providing its own operator until a later time in the project when the original contractor was replaced by a new contractor. At that time the contractor who had rented the crane from a non-member and non-party to the KBA contacted the Respondent, Sterett Crane & Rigging, LLC, and requested they provide an operator. After the crane was no longer needed at the jobsite Sterett Equipment, LLC sent an OSHA required certified assembly/disassembly director, Jamon Spore, to the jobsite to disassemble the crane. Mr. Spore was an employee of Sterett Equipment, LLC, the entity that owned the crane. Under the original rental agreements, the lessor, Sterett Equipment, LLC, was obligated to assemble and disassemble the crane. During disassembly the Union crane operator that that second contractor asked Sterett Equipment to provide an operator for contacted his Union representative and complained.

3. The same information between Respondent and Trifecta Steel, the ownership and names of ownership and control of Sterett Equipment, Respondent, and Trifecta Steel.

**RESPONSIVE MATERIAL:** This matter was explained in detail at the June 12<sup>th</sup> Grievance Hearing and counsel for the Union was advised they could obtain records from the online Indiana Secretary of State's Office and the Kentucky Secretary of State's Office. Further, the Union was already notified that Jamon Spore was and employee of Sterett Equipment and was acting in his supervisor role as Assembly/Disassembly director under the applicable OSHA requirements under a bare crane rental agreement that did not involve signature parties to the KBA. (See G.C. ex. 14 pages 1 through 24). And most importantly, the dispute had been defined at the Grievance Hearing to only include

4. A description of work done by the Respondent, full descriptions of the type and scope and type of work of Sterett Equipment, the Employer, and Trifecta Steel.

**RESPONSIVE MATERIAL:** At the grievance hearing the Union was advised of each companies type and scope of work in detail. Also, counsel for the Union was advised to review the websites for Sterett and Trifecta Steel for a more detailed statement of work performed.

Sterett Equipment was correctly described as an equipment holding and rental company for rentals of cranes and machinery. Aside from the apparent fact that the Sterett Equipment and Trifecta are signature parties of the CBA, the identification of the dispute being limited to the scope of work covered by the KBA and the definitions of covered work are clear proof that ownership and control those entities have no relevance. The work is either covered or not covered by the KBA. The Union's information requests directly related to the dispute at hand. Nowhere in the record is there any statement or indication from the Union that its original information request, made without having even explaining or defining their alleged complaint to Sterett, has any validity or reasonable relates to dispute at hand. The Union has failed to conduct itself in reasonable manner throughout this matter. They were asked to provide details on their grievance and point out the applicable violations of KBA provisions. They refused to do so. They were asked to pare down their information requests after the dispute had been defined. They refused to do so. They were asked to consider entering a confidentiality agreement related to production of materials for non-signatory parties to the KBA. They refused to do so. They also file the charges in this matter before the Grievance Hearing and a matter of 2 business days after making an unreasonable demand for information that was not relevant to the dispute.

5. The last years, all instances wherein Sterett Equipment provided an operator for equipment for which it rented, the names of those referrals, whether or not those referrals were within the bargaining unit represented by the Union.

**RESPONSIVE MATERIAL:** This material is just part of a fishing expedition and has no relevance to the grievance issues and remains overly broad and burdensome. Sterett Equipment, who is a non-signatory party to the KBA previously requested confidentiality provisions and for the scope of the request be pared down to reasonable size. The Union has refused to modify any of its requests despite having attended a grievance hearing with the arbitration committee.

6. All evidence that Respondent had that the crane Jamon Spore disassembled on the Hopkinsville, Kentucky site was a crane owned by a contractor.

**RESPONSIVE MATERIAL:** The Union has been provided copies of the lease agreements to the contractor and they were discussed in depth at the grievance hearing.

### **ARGUMENT**

The evidence in the record shows the Union acted in an irrational manner. Sterett was immediately responsive to the Union's notice of grievance and has remained responsive throughout this entire matter. Sterett advised the Union it intended to follow the dispute resolution process set forth in the KBA's Article 17 and submit a request for a hearing within 48 hours with the joint arbitration committee. It is ridiculous to claim Sterett failed to address the grievance. However, that is exactly what the Union maintains.

To avoid any confusion, Sterett is not responsible for unforeseen delays caused by the during processing the request by the Union and the Association. Carl Ray Dodge himself testified on this matter as well by confirming that Sterett had no role in the delayed grievance hearing. The parties attended a grievance hearing on June 12<sup>th</sup>, 2019 and additional disclosures were made of materials relevant to the dispute. Copies of all lease agreements are of record and employment verification of Mr. Spore was provided as well.

After the hearing results were returned with a split vote the matter was deemed ready for submission to arbitration under the KBA's dispute resolution system. However, the Union persists with prosecution of this claim despite their continued failure to climb down off the ledge. They have refused requests from non-signatory parties of the KBA for a confidentiality provision or pare down ny of the requests even after the grievance hearing in June of 2019. Mr. Dodge testified that that the actual controversy in this matter was "the mechanicing work, and the assembly and disassembly of cranes at that point." He went further to testify that there was no

definition of "mechanic" in the KBA and that the KBA did not have a black letter provision on assembly and disassembly of cranes. (See. Transcript page 61)

Sterett has already complied with any obligation to provide information. Sterett advised the Union that it could access corporate records from the Indiana and Kentucky Secretary of States' offices online. Also, during the grievance hearing documents regarding ownership and control of the crane, copies of crane rental agreements, employment contract and payment records for Jamon Spore, and correspondence files. Immediately after the Grievance Hearing Sterett provided supplemental copies of that relevant information were provided to the Union. Sterett received no response to those disclosures. During a conference call with the Administrative Law Judge the Union's counsel advised the judge that nothing relevant had been produced. Again, there is no dispute on what the dispute involves. It is limited to a contract interpretation question concerning the scope of work covered and definition, or lack of definition, of "mechanic" under the KBA. There are no grounds for expansive discovery unrelated to the dispute. Due to the Union's failure to act in good faith and continuing to demand information unrelated to the dispute, Sterett now asks the Board to exercise appropriate authority to limit information requests to relevant information only and inform the Union that it must also act in good faith during disputes.

Review of correspondence in this matter is very telling as to the parties attitudes and motives during this dispute. Sterett ask the Administrative Law Judge to review the General Counsel Exhibits 2 through 13 to ascertain which party has acted in good faith and has sought to adhere to the grievance procedures of the KBA.

The Union has intentionally misrepresented the facts and behavior of the parties to the Administrative Law Judge. As soon as Sterett obtained knowledge of the Union's grievance it immediately contacted the Union and provided clear facts on the matter, requested they work together in resolving the issue, requested clarification as to what the actual issue was and notified them of Sterett's intention to follow the contractual provisions for dispute resolution. It

appears clear the Union was not satisfied with Sterett's actions. Instead the Union, without notice filed a factually inaccurate set of Charges with Board which led to hearing in this matter. Review of correspondence between the Union's attorney and Sterett clearly show Sterett's commitment to work towards a resolution in good faith and also clearly show the Union fabricated a claim about interference with Union representatives on job sites. That claim was later withdrawn by the Union based on lack of any evidence.

The Union has tried to intimidate Sterett through unfounded accusations and claims. There is no logical reason the NLRB should be involved in this dispute. Sterett was informed of a grievance under the KBA, sought to have the Grievance Hearing within 48 hours, provided information relevant to the dispute, and requested the Union work in a reasonable matter to pare down or more narrowly define information sought to the dispute at hand. The Union instead did nothing to assist or attempt to resolve the information request. They chose to elevate the dispute by filing an NLRB complaint that was both inaccurate and unfounded. The arbitration procedures of the KBA should control this matter. The Union continues to persist without grounds and lacks the ability to reassess a situation based on development of facts and identification of issues. Carl Ray Dodge testified that the delay caused by Sterett's request to follow the grievance procedures in the KBA was not the fault of Sterett. On March 3<sup>rd</sup> Sterett notified the Association and the Union of its request for a hearing on the grievances within 48 hours. The subsequent delay was attributable to the Union and Association alone. Apparently the Association was unaware of the "Memorandum of Understanding – Grievances Involving Non-Member Contractors" that it had previously entered into with the Union. Sterett was involved in the discussions between the Union and the Association and cannot provide greater detail into their reasoning for scheduling the June 12<sup>th</sup> Grievance Hearing some three months from the date Sterett asked for the hearing to occur within 48 hours.

## CONCLUSION

For the reasons set forth herein, and based on the entire record, Respondent prays for the following relief:

1. Judgment against the Charging Party and dismissal of this action;
2. Respondent's costs expended herein; and
3. All other relief to which Respondent is entitled.



J. Sale Gordon  
GORDON GOETZ JOHNSON  
CALDWELL, PSC  
121 w. 2<sup>ND</sup> Street  
PO Box 1539  
Owensboro, Kentucky 42302  
(270) 684-5757  
(270) 684-5862 fax  
[sgordon@glofirm.com](mailto:sgordon@glofirm.com)  
*Counsel for Respondent*

## CERTIFICATE OF SERVICE

On December 12, 2019, I electronically signed and filed this document through the ECF system, which will send a notice of electronic filing to the other parties and on the same date I mailed copies of this document to:

James P Faul, Attorney  
Hartnett Reyes-Jones, LLC  
4399 Laclede Ave  
Saint Louis, MO 63108

Derek A. Johnson  
Counsel for the General Counsel  
NLRB Region 25  
575 N Pennsylvania St. Suite 238  
Indianapolis, IN 46204



J. Sale Gordon