The Region submitted this case for advice as to whether Operating Engineers Local 150 (“Local 150”) violated Section 8(b)(4)(ii)(D) of the Act by filing “pay-in-lieu” grievances against Central Contracting Services, Inc. (“Central”) for allegedly breaching the provisions of their collective-bargaining agreement that require crane assembly and disassembly work to be performed by unit employees despite an arbitrator previously awarding the disputed work to employees represented by Iron Workers Local 1 (“Local 1”) in a dispute resolution proceeding to which Central was not a party. We conclude that the Region should dismiss the charge, absent withdrawal, because Local 150’s grievances neither constituted proscribed coercive conduct nor a competing claim for the work under Section 8(b)(4)(ii)(D).

Central rents cranes to contractors and construction companies and has a longstanding collective-bargaining relationship with Local 150. The lease agreements provide that Central supply an operator, oiler, and mechanic, each of which is a Local 150-represented position, in addition to the equipment itself. Local 150 contends that the disputed work, assembly and disassembly of the crane, has historically been performed by Local 150-represented operating engineers supplied by Central but that in recent years Local 1-represented iron workers employed by the cranes’ lessees, here Danny’s Construction and Chicago Decking, have begun performing the disputed work.

In 2017, Local 150 negotiated language into the collective-bargaining agreement to which Central is signatory to preserve the disputed work for its members. That contract, known as the Mid-America Regional Bargaining Association, Illinois Building Agreement, effective June 1, 2017 to May 21, 2021, provides the following:

Article I, Section 3, “Scope of Work” includes “the assembly and dismantling of all equipment on the jobsite coming under the jurisdiction of the Operating Engineers” and further provides “[w]hen additional employees are needed to maintain or assist in the operation, assembly, disassembly or maintenance of any type, it shall be a member of the Bargaining unit unless explicitly required by this agreement.”

Article I, Section 8, “Assignment of Work” states “A. The Employer hereby agrees to assign ALL work that is to be performed in the categories described in Article I, Section 3 [Scope of Work] . . . to employees in the bargaining unit covered by this Agreement. B. The Employer, by entering into this Agreement hereby states and affirms that it is the Employer’s preference to have ALL work identified or described in Article I, Section 3 [Scope of Work] to be performed by employees in the bargaining unit
represented by the Union covered by this Agreement.”

Article VII, Section 2, “Machinery Operation” states “[t]he assembly and/or disassembly of all cranes shall require an Operator and Oiler, as required by this Agreement if any other employees are needed to assist in the assembly and/or disassembly of cranes they shall be a member of the Bargaining Unit” (emphasis added to identify language added in 2017).

Local 150 contends that Central violated these contract provisions when it transferred the assignment of assembly and disassembly work to its lessees in its lease agreements, breaching its obligation to ensure that all assembly work be performed by operating engineers. In each lease, Central expressly agreed to allow the lessee to provide its own crew for assembly and disassembly work.

Following three occasions between 2020 and 2020 when Local 1-represented iron workers performed crane assembly work that Local 150 asserts Central was contractually obligated to assign to operating engineers, Local 150 filed grievances against Central alleging it was entitled to damages equivalent to the amount that Local 150-represented employees would have earned had Central properly dispatched operating engineers to complete the assembly work at those projects. On 2020 and 2020, lessees Danny’s Construction and Chicago Decking sought resolution of the jurisdictional disputes between Local 150 and Local 1 over crane assembly work at the jobsites covered by Local 150’s grievances through the parties’ alternative dispute resolution mechanism.[3] In each case, an arbitrator awarded the work to Local 1-represented employees, relying in part on interunion agreements that the Iron Workers and Operating Engineers entered in the early 1970s for resolving jurisdictional disputes between them. Although Danny’s Construction, Chicago Decking, Local 150, and Local 1 were parties to each arbitration proceeding, Central was neither a party nor participated.

We conclude that Local 150 did not violate Section 8(b)(4)(ii)(D) by filing and maintaining pay-in-lieu grievances against Central because they were directed at Central rather than Danny’s Construction or Chicago Decking, a fact that forms the basis for concluding they neither constituted unlawful coercion nor a competing jurisdictional claim with a work assignment object.[4] Section 8(b)(4)(ii)(D) generally prohibits unions from, inter alia, using threats, coercion, or restraint with an object of forcing or requiring an employer to assign certain work to one group of employees, rather than another. See, e.g., NLRB v. Plasterers’ Local 79, 404 U.S. 116, 123 (1971). A violation of Section 8(b)(4)(ii)(D) requires a finding that (1) a party used proscribed means in furtherance of (2) a competing claim to disputed work between rival groups of employees.[5] See, e.g., Laborers (Capitol Drilling Supplies), 318 NLRB 809, 810 (1995). As set forth below, neither element can be satisfied in this case.

1. Local 150’s grievances do not constitute proscribed economic coercion within the meaning of Section 8(b)(4)(ii)(D).
We first conclude that Local 150’s grievances do not constitute economic coercion proscribed by Section 8(b)(4)(ii)(D) because they lack the illegal objective of contravening a prior work award. In the jurisdictional dispute context, a union’s grievance has an illegal objective and may be enjoined as an unfair labor practice where it seeks a result incompatible with a prior Board determination awarding work under Section 10(k) to employees represented by another union, or monetary damages in lieu of the work. See, e.g., Plasterers Local 200 (Standard Drywall), 357 NLRB 1921, 1923 (2011), enforced, 547 F. App’x 809 (9th Cir. 2013) (applying tenet determined in Bill Johnson’s, 461 U.S. 731, 737 n.5 (1983) that litigation can constitute an unfair labor practice if it has an illegal objective under federal law in finding contractual and judicial conduct unlawful because it sought a result contrary to Board’s 10(k) award); Operating Engineers Local 18 (Donley’s Inc.), 363 NLRB No. 184, slip op. at 2 (2016) (finding union’s pay-in-lieu grievances seeking assignment of disputed work contrary to two prior 10(k) determinations violated Section 8(b)(4)(ii)(D)), enforced, 712 F. App’x 511 (6th Cir. 2017). However, the Board has also held that a union’s grievance against an employer who subcontracted disputed work allegedly in breach of a union signatory subcontracting clause is not incompatible with a Board 10(k) order that awarded the disputed work to employees represented by a different union, so long as the employer subject to the grievance is not the subcontractor who assigned the disputed work. See, e.g., Carpenters Local 33 (AGC of Massachusetts/Blount Bros.), 289 NLRB 1482, 1484 (1988); Iron Workers Local 751 (Hoffman Construction), 293 NLRB 570, 571 (1989). In these and other similar cases, the alleged subcontracting violation occurred the moment the employer subcontracted the disputed work to a non-signatory employer, and the grievance does not conflict with the 10(k) award because it has no bearing on the non-signatory subcontractor’s assignment of work subject to the Board’s 10(k) order. Accordingly, a union’s “pay-in-lieu” grievance against the employer who subcontracted certain work to a non-signatory subcontractor that assigned the work consistent with a 10(k) award does not constitute a collateral attack on the 10(k) award. See Carpenters Local 33 (AGC of Massachusetts/Blount Bros.), 289 NLRB at 1484; Iron Workers Local 751 (Hoffman Construction), 293 NLRB at 571. Because such a grievance is not incompatible with the Board’s 10(k) determination, it cannot have an illegal objective and is not unlawful.

Initially, we note that there was no Board determination in the form of a Section 10(k) order here; the arbitrator selected by the JCB issued the disputed crane assembly and disassembly work award in favor of Local 1-represented employees. A grievance that contravenes an award of disputed work from an “agreed-upon method of voluntary adjustment” obviating the need for a Section 10(k) determination, such as the JCB, arguably has an illegal objective in the same way that a grievance that contravenes a Board Section 10(k) determination does. However, our conclusion here is the same regardless of the body that issued the work award. We therefore do not resolve the issue of whether contravening a voluntary dispute mechanism’s work award demonstrates the same illegal objective as contravening a Section 10(k) determination by the Board.
Based on the principles set forth above, we conclude that Local 150’s pay-in-lieu grievances against Central did not have an illegal objective and, thus, did not constitute unlawful coercion. Like the cases cited above, the material fact precluding finding an illegal objective is that the “pay-in-lieu” grievances charge the non-assigning employer, Central, and not the lessees, Danny’s Construction or Chicago Decking. Local 150 sought a remedy for Central allegedly breaching several provisions in the Illinois Building Agreement, specifically Article I, Sections 3 and 8, and Article VII, Section 2, requiring Central to assign crane assembly and disassembly work to Local 150-represented employees.[6] Although Central relinquished its right to assign the disputed work in agreements leasing cranes to Danny’s Construction and Chicago Decking rather than in subcontracting agreements, there is no material distinction between the two types of arrangements such that current Board precedent would not control the outcome. Local 150’s grievances seek only to compel Central to remedy its contractual breach by paying lost wages to Local 150 and do not interfere with the ability of lessees Danny’s Construction and Chicago Decking to assign the disputed work to Local 1-represented employees in compliance with the JCB arbitration decisions. Thus, they do not have the illegal objective of undermining a prior award of the disputed work and, thus, are not coercive conduct that violates Section 8(b)(4)(ii)(D).[7] See id.

2. For similar reasons, Local 150’s grievances are not unlawful because they lack a work assignment object under Section 8(b)(4)(D).

Second, we similarly conclude that no jurisdictional dispute exists here because Local 150’s grievances alone do not have the unlawful object of forcing the reassignment of work under Section 8(b)(4)(D). As noted above, to find a Section 8(b)(4)(D) violation, competing claims for work must be made in the same dispute. See, e.g., Laborers (Capitol Drilling Supplies), 318 NLRB at 810. Employees’ performance of the disputed work indicates that they claim that work within the meaning of Section 8(b)(4)(D). See, e.g., Sheet Metal Workers Local 54 (Goodyear Tire & Rubber Co.), 203 NLRB 74, 76 (1973). At the same time, in the construction industry, a union’s grievance to enforce a lawful union signatory subcontracting clause against a general contractor does not constitute a competing claim against the subcontractor assigning the work. See Laborers (Capitol Drilling Supplies), 318 NLRB at 810.

Based on the foregoing principles, a jurisdictional dispute is not present in the instant case because there is only one claim for the disputed work by Local 1-represented employees, while Local 150’s pursuit of damages constitutes a separate contractual dispute against a different employer. Only the Local 1-represented employees who work for Danny’s Construction and Chicago Decking made a claim to the crane assembly and disassembly work by performing it. Local 150’s conduct was, conversely, directed at Central and consequently does not constitute a competing claim for that work. Local 150’s grievances allege that Central improperly transferred the work to Danny’s Construction and Chicago
Decking in its leases by allowing them to supply the labor, when it should have preserved its right to assign the work to Local 150-represented employees. Those companies became the employers with the right to assign the disputed work, as discussed above. See, e.g., Iron Workers Local 21 (Lueder Construction), 233 NLRB 1139, 1140 (1977) (employees claim work in jurisdictional disputes from the company that ultimately controls and makes the job assignment). Local 150’s grievances against Central do not directly pressure Danny’s Construction and Chicago Decking to reassign the disputed work away from their Local 1-represented employees. See Laborers (Capitol Drilling Supplies), 318 NLRB at 810 (observing that the competing claim is typically a direct one against the subcontractor by either rival union). Thus, because there are no competing claims to the disputed work between rival groups of employees, a jurisdictional dispute does not exist. See, e.g., Laborers Local 1086 (Miron Construction), 320 NLRB 99, 100 (1995).

This email closes this case in Advice. Please contact us with any questions or concerns.

(b) (6), (b) (7)(C)

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1 Given that we find no merit to the current charge, we do not reach the propriety of a broad order. If the Region finds merit to the related charges alleging that Local 150 violated Section 8(b)(4)(i) or (ii)(D) based on its conduct in this labor dispute, it may resubmit that issue for advice.

2 Both lessees have collective-bargaining relationships with Iron Workers Local 1; Central does not.

3 The ADR mechanism is the Joint Conference Board (“JCB”) established by the Standard Agreement between the Construction Employers’ Association and the Chicago & Cook County Building & Construction Trades Council, to which all parties in this case are bound. The Standard Agreement is distinct from any collective-bargaining agreement to which the parties in this case are signatories. The JCB provides for the adjustment of jurisdictional disputes through arbitrators it selects.

4 In reaching these conclusions, we did not consider the related charges against Local 150 that the Region settled or dismissed. Moreover, the conclusion here that Local 150’s pay-in-lieu grievances did not violate Section 8(b)(4)(ii)(D) does not foreclose the Region from finding in other pending charges that Local 150 violated that provision by engaging in work stoppages or similar conduct.
5 A third requirement is that the parties have not agreed on a method for the voluntary adjustment of the dispute. See, e.g., NLRB v. Plasterers’ Local 79, 404 U.S. at 137; Laborers (Eshbach Bros.), 344 NLRB 201, 202-03 (2005). Here, it would appear this requirement cannot be met because all the relevant parties agreed to the alternative dispute resolution process in the Standard Agreement. Because we conclude that the evidence fails to establish that Local 150’s conduct described herein constituted proscribed means nor competing claims for the work, we do not reach the issue of whether an agreed-upon method calls for dismissal.

6 While the Illinois Building Agreement does include a union signatory subcontracting clause in Article III, Section 8, Local 150 did not specifically cite that provision in its grievance allegations, though it did include a catch-all provision alleging violations of “any and all other related Articles and Sections.” Regardless, the contract provisions listed above that Local 150 does allege Central breached similarly prohibit Central from assigning the disputed work to employees not represented by Local 150. Thus, Local 150’s non-reliance on the union signatory subcontracting clause does not distinguish this case from Carpenters Local 33 (AGC of Massachusetts/Blount Bros.), 289 NLRB at 1484, and Iron Workers Local 751 (Hoffman Construction), 293 NLRB at 571.

7 We note that Local 150’s grievances appear to be reasonably based in light of the Illinois Building Agreement provisions on which Local 150 relies. However, if the grievances had an illegal objective, their reasonable basis would not necessarily shield them from Section 8(b)(4)(ii)(D) liability. See, e.g., Plasterers Local 200 (Standard Drywall), 357 NLRB at 1924, 1929-31.

8 Although in related charges the Region concluded that Local 150 engaged in work stoppages that violated Section 8(b)(4)(ii)(D), the Board has not considered a union’s other unlawful conduct when assessing the legality of pay-in-lieu grievances filed against the general contractor. See Iron Workers Local 751 (Hoffman Construction), 293 NLRB at 570 n.2 (analyzing the lawfulness of the union’s pay-in-lieu grievance against general contractor separately from its threat to picket subcontractor, finding the grievance lawful and the threat to picket a violation of Section 8(b)(4)(ii)(D)).

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