Davey McKee Corporation *and* United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, Local 469; Arizona State District Council of Carpenters, including Millwrights, Local 1914; International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers, AFL–CIO, Local 627; Operative Plasterers and Cement Masons, Local 394; International Association of Heat and Frost Insulators and Asbestos Workers, Local 73; Operating Engineers, Local 428; International Association of Bridge, Structural and Ornamental Iron Workers, Local 75; Painters Local Union No. 86; Construction, Production and Maintenance Laborers Union Local 383; Sheet Metal Workers' International Association, Local Union No. 359, AFL–CIO, Joint Petitioner. Case 28–RC–4996

September 17, 1992

ORDER DENYING REVIEW

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The Board has delegated its authority in this proceeding to a three-member panel, which has considered the Joint Petitioner's request for review of the Regional Director's Decision and Order (pertinent portions of which are attached as an Appendix). The request for review is denied as it raises no substantial issues warranting review.

APPENDIX

The Joint Petitioner in its amended petition seeks to represent a collective-bargaining unit consisting of all construction employees employed by the Employer at all projects within the State of Arizona and the entire Navajo Reservation, excluding all other employees, clericals, supervisors and guards as defined by the Act.

The Employer is a Delaware corporation engaged in the construction, contracting, and engineering industry. At the time of the hearing, the Employer was engaged as a general contractor on two construction projects within the geographical area covered by the unit description for the El Paso Natural Gas Company. One of the projects known as the Window Rock Project is located near St. Michaels, Arizona. The other construction project, known as the Navajo Compressor Station (the Navajo Project), is located at Chambers, Arizona. Both projects involve the retrofitting of existing gas compressors in order to boost gas production. Portions of the projects were subcontracted to various subcontractors. At the time of the hearing, the Employer employed approximately fifty hourly and craft employees at each of the two sites.

The Employer contends that the petition should be dismissed because of the imminent cessation of both projects scheduled for March 6, 1992,[1] and because a representative complement of employees does not exist within the unit sought. In the event an election were nevertheless directed, the Employer argues that the construction voter eligibility rules enunciated by the Board in *S. K. Whitty & Co.*, 304 NLRB 819 (1992), would not be applicable since the Employer does not have ongoing operations in the geographical area encompassed by the petition, and because the current employees do not have a reasonable expectation of future employment.

The Joint Petitioner contends that the only issue in this proceeding is whether the Employer will be likely to be performing work within the ambit of the petitioned-for unit subsequent to March 6, the currently scheduled completion date. In this regard, the Joint Petitioner asserts that the record evidence fails to establish that the Employer will complete the two current projects by their scheduled March 6 completion date; and, that the record evidence, instead, demonstrates the likelihood that the Employer will continue to perform construction work on other projects employing petitioned-for unit employees.

The record establishes that the Employer entered into two separate construction contracts on August 15, 1991, with the El Paso Natural Gas Company. The Window Rock contract has a tentative mechanical completion date of January 31, whereas the tentative mechanical completion date for the Navajo Project is February 15. Employer witnesses testified without contradiction that the projects did not commence on the originally scheduled dates because of an initial delay in acquiring permits. As a consequence, the construction schedules for the projects were revised for March 6 completion dates. Since that initial revision in the scheduled completion dates, there have been no further schedule changes.

The Joint Petitioner claims that notwithstanding the scheduled completion dates the Employer's own reports establish that the current construction schedules are not being met and, therefore, that the March 6 completion date is speculative. Moreover, the Joint Petitioner sought to establish that due to winter weather conditions in northern Arizona, where the projects are located, that it is unlikely that the projects can be completed on time. Contrary to the Joint Petitioner, the Employer's manager of construction projects, W. B. Chambless, who has total responsibility for the management and completion of both projects, testified that those projects will be 95 to 96 percent complete by the end of February, and that the scheduled March 6 completion dates will be met. He also testified that when the projects are completed, the unit employees will all be terminated. The controls manager for the Employer, Sami Beidoun, who is responsible for budgeting the projects and monitoring and preparing the scheduling reports, testified that he tracks manpower for the projects on a weekly basis. His last such reports as of February 1, show completion dates for the projects as the first week of March. While conceding that certain portions of the work were not completed as forecast by the prior schedules, Beidoun testified that to make up for any previous project delays and to meet the scheduling targets, the Employer has increased its manpower and provided for overtime work. He testified further, without contradiction, that the March 6 completion dates have never been modified since the work actually commenced, and that the Employer has an economic incentive to complete the projects because they are lump-sum projects. Accordingly, the Employer would lose money to the extent the completion dates for the projects are not met. With respect to the Joint Petitioner's assertion that cold weather

[1] All dates are 1992 unless otherwise indicated.

and snow may delay the projects, there is no probative record evidence to establish that notwithstanding the weather conditions that the projects will not be completed on time or that they will be substantially delayed as a result of weather-related problems. The Employer adduced evidence that most of the work which would be affected by weather conditions has already been completed.

The Joint Petitioner also maintains that since the Employer is also in the process of securing other bids for work in the area covered by the petition, that the petition remains viable in any event. Contrary to the Joint Petitioner, W. B. Chambless, manager of construction projects, testified that the Employer had no other construction work under bid in Arizona or on the Navajo Reservation at the time of the hearing. No probative evidence was adduced to contradict this testimony, even though it appears that the Employer would bid additional work if the opportunity arose.

Based upon the foregoing, it is my view that a preponderance of the record evidence supports the Employer's contention that both the Window Rock Project and the Navajo Project will be completed or substantially completed by March 6, at which time all of the hourly and craft employees employed by the Employer at those sites will be terminated. In this regard, I view the Joint Petitioner's claim that the weather may affect the completion dates as purely speculative, particularly given the fact that most weather-affected work has already been completed. Similarly, I view the Joint Petitioner's contention that the Employer may secure additional work through select bids or other bids as conjectural.

The representation hearing in this matter was held on February 5 and 6. Thus, as of the date the hearing closed, there were 29 days, including weekends, before the scheduled close of the projects. There have been numerous Board decisions establishing that where an employer's operations are scheduled to terminate within 3 to 4 months that no useful purpose is served by directing an election. See *M. B. Kahn Construction Co.*, 210 NLRB 1050 (1974); *General Motors Corp.*, 88 NLRB 119 (1950); *Todd-Galveston Dry Docks*, 54 NLRB 625 (1944); *Fraser-Brace Enqineering Co.*, 38 NLRB 1263 (1942), and *Fruco Construction Co.*, 38 NLRB 991 (1942). In the instant case, given the fact that the projects will be completed in approximately 1 month, there is no basis for proceeding to an election, even assuming the possibility of a slight delay beyond March 6 in the completion of the projects. Moreover, the record establishes that the Employer has no other ongoing construction projects within the geographical scope of the unit or that it has such work under bid. The Joint Petitioner's claim to the contrary is based on wholly uncorroborated hearsay evidence and, accordingly, I must reject the Joint Petitioner's assertions in this regard. Based upon the foregoing facts and circumstances, I hereby conclude that it would serve no useful purpose to conduct an election at this time. I shall, therefore, dismiss the petition in this matter. However, should the petitioned-for unit remain in existence for a substantially longer period of time than is now anticipated or should the Employer acquire additional construction projects within the geographical scope of the unit covering the classification of employees described in the petition, I will entertain a motion by the Joint Petitioner to reinstate the petition.

Under the foregoing circumstances, I find it unnecessary to resolve any other issues raised by the parties in this proceeding.

ORDER

IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.