

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 562, AFL-CIO and C & R Heating & Service Company, Inc.

Corrigan Company Mechanical Contractors, a Division of Corrigan Brothers, Inc. and Sheet Metal Workers' International Association, AFL-CIO, Local Union No. 36. Cases 14-CD-940 and 14-CD-941

August 20, 1999

DECISION AND DETERMINATION OF DISPUTES

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

This is a consolidated proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges in Case 14-CD-940 on November 8, 1996,¹ by C & R Heating & Service Company, Inc. (C & R), and in Case 14-CD-941 on November 13, by Corrigan Company Mechanical Contractors (Corrigan). It is alleged in each case that United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 562, AFL-CIO (Pipe Fitters) violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the respective Employers to assign certain work to employees represented by Pipe Fitters rather than to employees represented by Sheet Metal Workers' International Association, AFL-CIO, Local Union No. 36 (Sheet Metal Workers).

Pursuant to notice, a hearing was held at St. Louis, Missouri, on December 10 and 16 before Hearing Officer Kathi M. Grampp. C & R, Corrigan, Pipe Fitters, and Sheet Metal Workers were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. After the hearing, C & R, Corrigan, and Sheet Metal Workers filed briefs.

On December 19, Sheet Metal Workers filed a special appeal of the hearing officer's decision to revoke Subpoena Duces Tecum No. B-266264. The subpoena, requested by Sheet Metal Workers, was directed to John W. Siscel, Executive Vice President of the Mechanical Contractors Association of St. Louis, Missouri, Inc. (MCA), the collective-bargaining representative of Charging Party Employers with respect to Pipe Fitters. The subpoena, in essence, seeks production of correspondence, notes, minutes, memoranda, and other documents referring or relating to Sheet Metal Workers' contract negotiations or jurisdictional disputes, threats to

strike or picket by Pipe Fitters, or the filing of unfair labor practice charges with the Board.

Sheet Metal Workers contends that production of these documents is necessary to demonstrate that the threats cited to invoke the Board's authority under Section 10(k) of the Act were shams and part of a collusive effort by the Employers and Pipe Fitters to obtain the Board's approval of the current assignments of the work in dispute. If so, Sheet Metal Workers contends, the threshold requirement for Section 10(k) proceedings, that there be reasonable cause to believe that Section 8(b)(4)(D) has been violated, would not be satisfied and the notice of hearing must be quashed.

In their opposition to the special appeal, the Employers and Siscel assert that the documents requested are not necessary to decide the issues in this proceeding, and that the record contains testimony that the threats were genuine. Moreover, the Employers and Siscel contend that Sheet Metal Workers sought similar information through a subpoena duces tecum directed to Pipe Fitters Business Manager O'Mara but did not call O'Mara to testify regarding this issue.² Having declined to obtain information from a party, the Employers and Siscel argue, Sheet Metal Workers is not entitled to have its subpoena directed to a nonparty enforced.

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. With respect to the revocation of the subpoena, we find merit in the position of the Employers and Siscel supporting the hearing officer's ruling.

The Board's authority to decide jurisdictional disputes under Section 10(k) requires a finding that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This reasonable cause standard is substantially lower than that required to establish that the statute has in fact been violated. In addition, the Board's Section 10(k) procedure, unlike the unfair labor practice procedure, does not call for assessments of the credibility of witnesses.

Under the circumstances of the present cases, we find that the hearing officer properly revoked Sheet Metal Workers' subpoena. As detailed herein, the statements made by a representative of Pipe Fitters to the Employers clearly constitute threats of economic action, and the individuals to whom the threats were made testified that they took them seriously. Sheet Metal Workers has brought forth no evidence to support its allegation that the threats were not genuine or were made in collusion with the Employers. See, e.g., *Machinists Local 724 (Holt Cargo)*, 307 NLRB 1394, 1396 (1992); *Teamsters*

¹ All dates are 1996 unless otherwise indicated.

² The subpoena directed to O'Mara requested "all correspondence to or from any representative of any St. Louis area mechanical contractor" pertaining to the same subjects as the subpoena directed to Siscel.

Local 6 (Anheuser-Busch), 270 NLRB 219, 220 (1984). In the absence of any evidence contradicting the testimony in the record, the hearing officer properly refused to permit Sheet Metal Workers to engage in a fishing expedition through the use of the Board's subpoena authority.

On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that C & R is a Missouri corporation engaged in business as a nonretail mechanical construction contractor and annually purchases and receives goods and materials valued in excess of \$50,000 for installation at its jobsites from points located outside the State of Missouri. The parties further stipulated that Corrigan is a Missouri corporation engaged in business as a nonretail mechanical construction contractor, and annually purchases and receives goods and materials valued in excess of \$50,000 for installation at its jobsites, and that were shipped directly to that jobsite from points located outside the State of Missouri. We find that C & R and Corrigan are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The parties also stipulated, and we find, that Pipe Fitters and Sheet Metal Workers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTES

A. Background and Facts of Disputes

1. Case 14-CD-940

C & R employs employees represented by Pipe Fitters and Sheet Metal Workers, and has contractual relationships with both Unions through separate multiemployer associations. The collective-bargaining agreement between the MCA and Pipe Fitters is effective from January 1, 1996, through May 31, 2000. At the time of the hearing in this proceeding, the Sheet Metal and Air Conditioning Contractors National Association, St. Louis Chapter (SMACNA) and Sheet Metal Workers had agreed to contract terms for a new collective-bargaining agreement effective May 1, 1996, through August 31, 2001, to replace the contract that expired April 30, 1996. The new contract was being prepared for printing and final signatures, but the wage provisions had already been implemented.

In September, as part of a subcontract to install a heating, ventilation and air conditioning (HVAC) system at the School of Law at Washington University in St. Louis, C & R began the installation of approximately 75 fin tube radiator units, each of which consists of copper tubing with fins, mounted on a back plate with hangers and protected by a cover and end plates. On September 17, Sheet Metal Workers filed a grievance with the Local Joint Adjustment Board for the Sheet Metal Industry,

asserting that its contract had been violated by the assignment of the work to employees represented by Pipe Fitters. After receiving the grievance, C & R Executive Vice President John Eilerman telephoned Sheet Metal Workers Business Representative John Lorson. Lorson claimed that the installation of the back plates, covers, and caps was within the jurisdiction of Sheet Metal Workers. Lorson repeated this claim in an October telephone conversation with Eilerman. On November 4 or 5, Eilerman informed Pipe Fitters Business Manager Jim O'Mara that Sheet Metal Workers claimed part of the work, and O'Mara responded that it was Pipe Fitters work and that if C & R did anything in terms of changing the assignment of the work, Pipe Fitters would strike or picket. C & R continued to assign the work to employees represented by Pipe Fitters. The original installation work was completed in November, and the final revalving work and installation of a few covers were expected to be completed by the end of December.

2. Case 14-CD-941

Corrigan also has a collective-bargaining agreement with Pipe Fitters through its membership in the MCA. Corrigan has no contractual relationship with Sheet Metal Workers. However, Lyon Sheet Metal (Lyon), which like Corrigan is an unincorporated division of Corrigan Brothers, Inc., has a collective-bargaining agreement with Sheet Metal Workers. Corrigan and Lyon operate out of separate locations with separate work forces, management, equipment, and labor relations programs.

a. *Anheuser-Busch Stockhouse 19*

In early 1995, Corrigan obtained a subcontract for tank installation at a new Anheuser-Busch beer storage facility in St. Louis. The subcontract required, in part, the installation of 21 sleeves fabricated by the general contractor. Sleeves are rectangular pieces of pipe or plate, welded together and installed on a deck or in a wall before concrete is poured, for the purpose of maintaining an opening in the concrete through which pipes, ducts, or equipment will pass. The particular sleeves involved in Corrigan's subcontract are 40-50 inches in diameter and intended for the installation of "catch-o'-pack" piping units as part of an air conditioning system that was to be installed by Rock Hill Mechanical, a sheet metal contractor. Corrigan assigned the sleeve installation work to its employees represented by Pipe Fitters. The installation began in early 1996 and ended in June, with only repair work remaining. The most recent repairs prior to the hearing were performed on November 16.

On October 30, Corrigan President Tom Corrigan learned from Lyon President Mike Corrigan that Sheet Metal Workers had filed a grievance against Lyon in February, alleging that Lyon had assigned the sleeve work to Pipe Fitters in violation of its contract with

Sheet Metal Workers.³ When Tom Corrigan informed O'Mara of Sheet Metal Workers' grievance, O'Mara stated that the sleeves, as part of a mechanical package, were within the jurisdiction of Pipe Fitters, and that any reassignment of the work to employees represented by Sheet Metal Workers would be met with a strike. In a letter dated November 13, O'Mara reiterated Pipe Fitters' claim to the work and threatened to strike or picket if the work were assigned to Sheet Metal Workers-represented employees.

b. MEMC project

Corrigan was also awarded a subcontract to install an HVAC system and a scrubber system at the O'Fallon, Missouri facility of MEMC, a manufacturer of silicon wafers for computers. The scrubber system collects contaminated air, which is then flushed with a flushing agent, cleaned, and discharged into the atmosphere. The scrubber consists of three parts, a dirty side that collects the contaminated air, the scrubber equipment itself, and a clean air side that releases the cleaned air. Corrigan assigned the dirty side and the scrubber equipment to employees represented by Pipe Fitters, and expected to assign the clean air side to employees represented by Sheet Metal Workers through a later subcontract.

About November 4, after learning that another mechanical contractor at MEMC had received a claim from Sheet Metal Workers for all of the scrubber work, Corrigan Vice President Jim Corrigan contacted Larry Tucker, a Sheet Metal Workers business representative, to find out that Union's position. Tucker claimed the clean side and dirty side work for employees represented by Sheet Metal Workers, asserting that only the installation of the scrubber itself is within the jurisdiction of Pipe Fitters. After Jim Corrigan told Tom Corrigan about Sheet Metal Workers' claim to the work, Tom Corrigan contacted O'Mara, who stated that the work on the dirty side and the scrubber was within the jurisdiction of Pipe Fitters and threatened to strike if Corrigan reassigned the work. The claim of the work and the threat were restated in a November 13 letter from Pipe Fitters. Corrigan did not change its assignment of the work, which began approximately 2 weeks before the hearing in this proceeding and was expected to conclude about mid-January 1997.

B. Work in Dispute

The work in dispute is identified in the notice of hearing.⁴ In Case 14-CD-940, the work in dispute involves

³ After a deadlock before the local grievance panel, the grievance was, at the time of the hearing, subject to appeal to the next level of the contractual grievance procedure.

⁴ Although a witness testified that Sheet Metal Workers also claimed jurisdiction over the installation of the end caps in Case 14-CD-940, and another witness, testifying about the work at the Anheuser-Busch jobsite in Case 14-CD-941, referred specifically to sleeves in mechanical packages, we note that the descriptions of the

the installation of covers and backs on fin tube radiators at the construction site of the Washington University School of Law in St. Louis, Missouri. The work in dispute in Case 14-CD-941 involves the installation of sheet metal duct sleeves at Stockhouse 19, Anheuser-Busch, St. Louis, Missouri; and the installation of the dirty side intake piping of the scrubber system at the MEMC facility in O'Fallon, Missouri.

C. Contentions of the Parties

Employers C & R and Corrigan contend that there is reasonable cause to believe that Pipe Fitters violated Section 8(b)(4)(D) of the Act and therefore the Board must make a determination of the merits of the disputes. C & R and Corrigan contend that the factors of collective-bargaining agreements, employer preference and past practice, industry practice, relative skill, and, with respect to the disputed work of C & R, a previous decision by a Joint Jurisdictional Committee of area contractors, support an award of the work to employees represented by Pipe Fitters.

Sheet Metal Workers asserts that the notice of hearing should be quashed, alleging that the Employers and Pipe Fitters are acting in collusion to obtain access to the Section 10(k) procedure and a Board determination favoring the current assignment of the disputed work to employees represented by Pipe Fitters. Sheet Metal Workers argues that failure to recognize Pipe Fitters' threats as shams will encourage abuse of the Board's processes. Sheet Metal Workers contends that, because the disputed work had largely been completed by the time of the various threats and the Employers did not consider reassigning the work, the threats carried no coercive impact. Based on the same considerations, Sheet Metal Workers maintains that there were no competing claims. In addition, with respect to the MEMC project, Sheet Metal Workers, relying on *Laborers Indiana District Council (Capitol Drilling)*, 318 NLRB 809 (1995), asserts that there are no competing claims because any dispute it may have concerning that work would be with Lyon, with which it has a collective-bargaining relationship.

Sheet Metal Workers further contends that, if the Board finds the statute applicable and determines the disputes, the work should be awarded to employees it represents based on the factors of past and area practice and efficiency. Sheet Metal Workers also maintains that such an award of the work is required in accordance with a 1956 jurisdictional agreement between the two Unions.

D. Applicability of the Statute

Before the Board may proceed with a determination of the disputes pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe Section 8(b)(4)(D) of the Act has been violated.

work in dispute in the notice of hearing were not amended, and that the parties' contentions on brief are consistent with the notice of hearing.

In Case 14–CD–940, Pipe Fitters threatened to strike or picket if C & R did anything in terms of changing the assignment of the disputed work. In Case 14–CD–941, Pipe Fitters orally threatened to strike, then threatened in writing to strike or picket, if the work at Anheuser-Busch Stockhouse 19 were reassigned. Similarly, Pipe Fitters threatened to strike if the disputed work at MEMC were reassigned to employees represented by Sheet Metal Workers. In light of the foregoing, and the discussion above pertaining to Sheet Metal Workers' subpoena, we conclude that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated.

Moreover, we do not find merit in Sheet Metal Workers' contention that there are no competing claims with respect to some of the disputed work. We find, contrary to Sheet Metal Workers' assertion, that none of the disputed work had been completed at the time of the respective threats by Pipe Fitters. Although the initial installation of the sleeves at the Anheuser-Busch facility was finished before the threat as to that work, the installation project also involved repairs and maintenance of the sleeves during subsequent steps in the construction, so that the work had not yet been delivered under the contract. In addition, we find that Sheet Metal Workers' contention that there are no competing claims as to the disputed sleeve work because its grievance was filed against Lyon rather than Corrigan is inconsistent with its apparent theory, in filing the grievance, that Corrigan and Lyon are a single employer.⁵

The parties have stipulated that there exists no agreed-upon method for voluntary adjustment of the disputes within the meaning of Section 10(k). Accordingly, the disputes are properly before the Board for determination.

E. Merits of the Disputes

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional 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 (1962).

The following factors are relevant in making the determination of disputes.

1. Certifications and collective-bargaining agreements

A. Neither Pipe Fitters nor Sheet Metal Workers has been certified by the Board as the collective-bargaining representative of the employees performing the disputed work for either of the Employers. Accordingly, this factor is not helpful in determining the disputes.

⁵ Sheet Metal Workers provides no basis for that theory here, and we reject it below.

C & R is a signatory to multiemployer collective-bargaining agreements with both Pipe Fitters and Sheet Metal Workers. The Pipe Fitters' agreement states that its terms apply to work by the signatory employers within the jurisdiction of Pipe Fitters, which is described in the contract to include, *inter alia*,

All piping, setting and hanging of all units and fixtures for air-conditioning, cooling, heating, roof cooling, refrigerating, ice making, humidifying, dehumidifying, dehydrating, by any method, and the changing and testing, servicing of all work after completion.

The agreement with Sheet Metal Worker states that its terms apply to employees engaged in, *inter alia*,

the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and all air-veyor systems and air-handling systems regardless of material used including the setting of all equipment and reinforcements in connection therewith

Among the types of sheet metal work specified as within the Union's jurisdiction is the following.

Any and all types of sheet metal work specified for use in connection with or incidental to direct, indirect or other types of heating, ventilating, air conditioning and cooling systems; including risers, stacks, ducts, S strips, dampers, casings, recess boxes, outlets, radiator enclosures, exhausts, ventilators, frames, grilles, louvers, registers, cabinets, fans and motors

In view of these provisions, we find that each collective-bargaining agreement arguably covers the disputed work involving the radiator covers and backs in Case 14–CD–940. Therefore, this factor neither favors nor disfavors C & R's current assignment of the work.

B. Corrigan, like C & R, has a collective-bargaining agreement with Pipe Fitters through the Mechanical Contractors Association. Corrigan has no agreement with Sheet Metal Workers. Sheet Metal Workers argues that because Lyon Sheet Metal, another unincorporated division of Corrigan Brothers, is party to a contract with Sheet Metal Workers, the disputed work should have been performed by employees employed by Lyon and represented by Sheet Metal Workers. Sheet Metal Workers has not, however, provided any basis for finding that Corrigan and Lyon are a single employer. Therefore, this factor favors Corrigan's current assignment of the disputed work to employees represented by Pipe Fitters at each jobsite.

2. Company preference and past practice

A. C & R Executive Vice President Eilerman testified that, when C & R performs the installation of single units of finned tube radiation, such as those at Washington University, it traditionally assigns the work, including the installation of backs and covers, to its employees represented by Pipe Fitters. When the job involves a wall-to-wall installation, on the other hand, the work is assigned to employees represented by Sheet Metal Workers. Eilerman further testified that C & R prefers to continue this method of assignment. We find that the factors of company preference and past practice favor assignment of the work to C & R's employees represented by Pipe Fitters.

B. The record shows that Corrigan has assigned the installation of sleeves at the Anheuser-Busch facility in the past to employees represented by Pipe Fitters, and that it has assigned that work at other locations to Pipe Fitters-represented employees or to plumbers. Tom Corrigan also testified that Corrigan has installed 30 to 40 scrubbers since the 1960s, and that its practice has been to assign work on the dirty side of scrubbers to Pipe Fitters-represented employees, and work on the clean side of the system to employees represented by Sheet Metal Workers or, in cases of large industrial applications, to boilermakers. He testified that in the MEMC project the clean side work would be subcontracted to another company and performed by Sheet Metal Workers-represented employees. Tom Corrigan stated that Corrigan preferred to assign the disputed work to Pipe Fitter-represented employees. Therefore, company preference and past practice support the award of the work to Corrigan's Pipe Fitter-represented employees.

3. Area practice

A. With respect to the disputed work at Washington University, Eilerman testified that other local companies assign work of this type to employees represented by Pipe Fitters. O'Mara also testified that the area practice is to assign single-unit radiator installation work to crews consisting entirely of Pipe Fitters-represented employees. Sheet Metal Workers presented no testimony that area practice supported its claim for the disputed work. Under these circumstances, we find that area practice favors C & R's current assignment of the disputed work.

B. Tom Corrigan testified that mechanical contractors routinely assign to their Pipe Fitters-represented employees work involving the installation of sleeves when that work is bid as part of mechanical packages. He further testified that employees represented by Sheet Metal Workers also may install sleeves for their own work. Mike Corrigan testified that Lyon employees represented by Sheet Metal Workers have installed sleeves for sheet metal duct work, and a Lyon employee represented by Sheet Metal Workers testified that he and his coworkers

have installed sleeves for duct work, exhaust, and HVAC. A Sheet Metal Workers-represented employee of another contractor testified, on the other hand, that he had never installed sleeves during his 14 years working in the area, though he further testified that he had not, to his knowledge, been on jobs where Pipe Fitter-represented employees had installed the sleeves. Sheet Metal Workers presented testimony that each craft installs the sleeves necessary for its own work, but Mike Corrigan testified that this is not the area practice. Based on this conflicting evidence, we find that this factor does not favor an award of the disputed work to either group of employees.

With respect to the disputed work on the scrubber at the MEMC facility, Tom Corrigan testified that the area practice of the members of the MCA is to assign work on the dirty side and the equipment side of scrubber systems to employees represented by Pipe Fitters. Corrigan's Executive Vice President, Jim Corrigan, also testified that work on the dirty side of scrubbers is considered the work of Pipe Fitters-represented employees, although he understood that Lyon has performed some scrubber work at MEMC and believed that the work was assigned to Sheet Metal Workers-represented employees. O'Mara testified regarding two scrubber installation projects performed by other contractors using Pipe Fitters-represented employees. Based on the foregoing, we find that the area practice favors an award of the disputed work at the MEMC facility to employees represented by Pipe Fitters.

4. Relative skills

A. According to Eilerman, the disputed work involving the covers and backs of the finned tube radiators at Washington University is not highly skilled work, and that the same skills and tools are used for single-unit and wall-to-wall installations. Eilerman further stated, however, that C & R is satisfied with the performance of the work by Pipe Fitter-represented employees. We find that this factor does not favor or disfavor the award of the work to C & R's employees as currently assigned.

B. The record shows that Pipe Fitters-represented employees routinely perform installations of sleeves. Tom Corrigan testified that it is important that the location and dimension of the sleeves be precise in accordance with specifications. The record also indicates, however, that employees represented by Sheet Metal Workers, Plumbers, and Iron Workers also install sleeves. We therefore find that this factor does not favor or disfavor an award of the disputed work to Corrigan's employees represented by Pipe Fitters.

Tom Corrigan testified that the disputed work on the scrubber system requires particular skills. The work involves toxic chemicals that are highly corrosive and must not be permitted to escape. In addition, the employees perform orbital welding, which involves fusing

materials together rather than joining them by adding metal to them. Tom Corrigan testified that Corrigan employees receive training and certification in orbital welding through the Pipe Fitters union hall and the equipment manufacturers. He stated that the Pipe Fitters-represented employees are very adept at this skill. We find that the factor of relative skills favors an award of the disputed work at the MEMC facility to Corrigan's employees represented by Pipe Fitters.

5. Economy and efficiency of operations

Eilerman testified that C & R considers it economical and efficient to assign the disputed work at Washington University to its employees represented by Pipe Fitters. Similarly, Tom Corrigan testified that the most efficient and economical assignment of the disputed work at the Anheuser-Busch and MEMC facilities is the current assignment to Corrigan's Pipe Fitter-represented employees. We find that the factor of economy and efficiency of operations favors an award of the work in dispute to the Employers' employees as currently assigned.

6. Prior jurisdictional dispute determinations

C & R presented evidence that the present jurisdictional dispute concerning the work at Washington University was considered by a Joint Jurisdictional Committee established for the purpose of resolving disputes between Pipe Fitters and Sheet Metal Workers and composed of various local contractor members of the MCA and SMACNA.⁶ C & R introduced testimony by Eilerman, as well as the minutes of a February 14 committee meeting, stating that the committee awarded the work to employees represented by Pipe Fitters based on the local past practice. Eilerman testified that the Unions had agreed to be bound by the decisions of the committee, and the Employers, in their brief, cite a provision in the Sheet Metal Workers' collective-bargaining agreement that

If a contractor is signatory to a labor agreement with more than one union and a jurisdictional dispute arises between the crafts the contractor employs . . . [t]he contractors and the union agree to abide by any decision made by any local or national Jurisdictional Disputes Board.

The record, however, does not provide evidence as to whether the committee was a "Jurisdictional Disputes Board" within the meaning of this provision. In addition, the record includes a February 26 letter from Sheet Metal Workers to MCA President Siscel protesting the committee's determination. The letter states that Sheet Metal Workers, contrary to the meeting minutes, did not agree to the guidelines applied by the committee and that, in light of the committee's decisions favoring Pipe Fitters, Sheet

⁶ No party asserts that the committee represents an agreed-upon method for resolving the instant dispute.

Metal Workers could not be expected to continue to submit disputes to the Board.

In light of the foregoing, we do not find that this factor favors or disfavors an award of the disputed work to C & R's employees represented by Pipe Fitters.

7. Interunion agreements

The record includes a 1956 agreement between the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry and the Sheet Metal Workers' International Association, supplemented by explanatory diagrams dated September 30, 1958. The documents purport to define the agreed-upon work jurisdictions of employees represented by the two Unions. The 1956 agreement states in pertinent part:

The installation of all room radiators, convectors and fin-type radiators when enclosures are made to fit the radiator or convector and shipped to the job as a manufactured unit shall be handled, unloaded and installed in their entirety by members of the United Association. An exception shall apply when an enclosure is made up and installed to cover space beyond the convector radiator, or used or installed beyond the cover of the manufactured convector unit to fill out a space between the end of the window bay and the radiator enclosure, in which case the handling, unloading and installation of such enclosure shall be the work of members of the Sheet Metal Workers.

One of the 1958 diagrams shows a one-section convector cover, and indicates the distance between the end of the coil and the end of the convector cover. A legend states, "under 8" = U.A. 8" or "over = Sheet Metal Workers." Eilerman testified that Lorson had asserted to him that the diagram meant that if the finned tube radiation was more than 8 inches from the end plate, the work must be assigned to employees represented by Sheet Metal Workers. Eilerman testified that he did not know the distance between these points on the disputed work. Although the record includes documents showing specifications for the units installed by C & R at Washington University, neither these documents nor witness testimony clearly states the measurement that is needed to apply the criteria shown on the 1958 diagram. In addition, the record does not show that C & R has agreed to be bound by the agreement between the Unions, or that the area and industry practice in fact conforms to the terms of the agreement. Based on the record evidence, we cannot find that the interunion agreement favors or disfavors the current assignment to Pipe Fitter-represented employees.

Conclusions

After considering all of the relevant factors, we conclude that the factors favor the award of the disputed work to the employees represented by Pipe Fitters consistent with the Employers' current assignments. As to C & R, we conclude that the employees represented by

Pipe Fitters are entitled to perform the disputed work based on company preference and past practice, area practice, and economy and efficiency of operations. As to Corrigan, we award the disputed work at Anheuser-Busch Stockhouse 19 to the employees represented by Pipe Fitters based on collective-bargaining agreements, company preference and past practice, and economy and efficiency of operations; and we award the disputed work at the MEMC facility to the Pipe Fitters-represented employees based on collective-bargaining agreements, company preference and past practice, area practice, relative skills, and economy and efficiency of operations.

In making these determinations, we are awarding the work to the employees represented by Pipe Fitters, not to the Union or its members.

Scope of the Awards

In the hearing in the present proceeding, Pipe Fitters requested that the Board issue a broad award in order to avoid the necessity to return to the Board based on Sheet Metal Workers repeated claims to work performed by Pipe Fitters, including through grievances and claims for monetary relief. Sheet Metal Workers asserts that if the work is awarded to employees represented by Pipe Fitters, the Board should issue a narrow award. Sheet Metal Workers argues that, even though it intends to claim similar work in the future, it has not resorted to unlawful means in support of its claims to disputed work. Conversely, if the Board awards the work to employees it represents, Sheet Metal Workers argues that a broad award is appropriate based on what Sheet Metal Workers asserts is Pipe Fitters' proclivity to violate Section 8(b)(4)(D) in order to obtain work.

In order to grant a broad award in a jurisdictional determination, the Board requires evidence that: (1) the disputed work has been a source of controversy in the relevant geographic area and that disputes may recur; and (2) the charged party has a proclivity to engage in wrongful conduct in order to obtain work similar to that in dispute. *Bricklayers (Sesco, Inc.)*, 303 NLRB 401 (1991). We do not find that a broad award is appropriate in this proceeding. Although the record indicates that there is an ongoing dispute regarding work jurisdiction

between Pipe Fitters and Sheet Metal Workers,⁷ each of the present disputes involves a distinct type of work. Therefore, even if we were to conclude that other disputes between these Unions are likely to arise in the future, we could not anticipate the nature of the work that would be disputed or the likelihood that we would award the work to Pipe Fitters-represented employees, as we do in this proceeding. In addition, we find that there is no sufficient basis for determining that Pipe Fitters has a proclivity to violate Section 8(b)(4)(D). Accordingly, our award in these cases is limited to the controversies that gave rise to this proceeding.

DETERMINATION OF DISPUTES

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

1. Employees of C & R Heating & Service Company, Inc., represented by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 562, AFL-CIO, are entitled to perform the installation of covers and backs on the tube radiators at the construction site of the Washington University School of Law in St. Louis, Missouri.

2. Employees of Corrigan Company Mechanical Contractors, a Division of Corrigan Brothers, Inc., represented by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 562, AFL-CIO, are entitled to perform the installation of sheet metal duct sleeves at Stockhouse 19, Anheuser-Busch, St. Louis, Missouri.

3. Employees of Corrigan Company Mechanical Contractors, a Division of Corrigan Brothers, Inc., represented by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 562, AFL-CIO, are entitled to perform the installation of the dirty side intake piping of the scrubber system at the MEMC facility in O'Fallon, Missouri.

⁷ The parties in this proceeding stipulated that the Board could take judicial notice of the official documents filed in three other disputes involving the same Unions.