

**United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 562, AFL-CIO and Murphy Company Mechanical Contractors & Engineers, d/b/a Grossman Contracting Company and Sheet Metal Workers' International Association, AFL-CIO, Local No. 36, Party in Interest**

**United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 562, AFL-CIO and C & R Heating & Service Company, Inc. and Sheet Metal Workers' International Association, AFL-CIO, Local No. 36, Party in Interest.** Cases 14-CD-935, 14-CD-937, and 14-CD-936

September 30, 1999

#### DECISION AND DETERMINATION OF DISPUTES

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN  
AND BRAME

This is a consolidated<sup>1</sup> proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges in Case 14-CD-935 on August 20, 1996,<sup>2</sup> by Grossman Contracting Company (Grossman); in Case 14-CD-936 on August 23, by C & R Heating & Service Company (C & R); and in Case 14-CD-937 on September 3 by Grossman. It is alleged in each case that United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 562, AFL-CIO (Pipefitters) 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 Pipefitters rather than to employees represented by Sheet Metal Workers' International Association, AFL-CIO, Local Union No. 36 (Sheet Metal Workers). The hearing was held on September 9 and 10 before Hearing Officer Donald Jueneman.

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

Grossman, a Missouri corporation, is engaged in business as a nonretail mechanical contractor at its facilities in St. Louis, Missouri, where it annually purchases and receives, directly from points located outside the State of

Missouri, goods valued in excess of \$50,000. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

C & R, a Missouri corporation, is engaged in business as a nonretail mechanical contractor at its facilities in St. Louis, Missouri, where it annually purchases and receives, directly from points located outside the State of Missouri, goods valued in excess of \$50,000. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The parties also stipulate, and we find, that Pipefitters 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

Grossman and C & R employ employees represented by Pipefitters and Sheet Metal Workers, and have contractual relationships with each labor organization through their memberships in, and assignment of bargaining rights to, separate multiemployer associations. The collective-bargaining agreement between the Mechanical Contractors Association of St. Louis, Missouri, Inc. (MCA) and Pipefitters 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.

##### 1. Case 14-CD-935

###### a. MEMC project

The Employer, Grossman, is a mechanical subcontractor to McCarthy Construction at a project in O'Fallon, Missouri, for MEMC, a manufacturer of microelectronic wafers used to make microelectronic chips.

The first disputed task at the MEMC facility involves a clean room used in the manufacturing process and the installation of a three-sided containment system to cover pipelines carrying chemicals and gases through the clean room at the floor baseboard level. When fastened over the piping, the containment system protects the piping and provides a means to contain any gases which might escape from the pipes so that they may be exhausted to the outside. The three-sided sheet metal system is fabricated by the Employer using Sheet Metal Workers-represented employees at its sheet metal fabrication shop. The installation also includes four-sided airtight cable trays which were purchased from outside sources.

<sup>1</sup> An order consolidating cases and notice of hearing was issued on September 6, 1996. On October 18, 1996, the Board issued an order consolidating these cases for briefing with Case 14-CD-938.

<sup>2</sup> All dates are 1996 unless otherwise indicated.

On or about July 18, the Employer met with representatives from Pipefitters and Sheet Metal Workers; at that time, the Employer discussed the installations of the containment system, and both Unions claimed the work of installing the containment system. On July 31, Sheet Metal Workers filed a grievance with the Local Joint Adjustment Board for the Sheet Metal Industry (LJAB), contending that the work should have been awarded to employees represented by Sheet Metal Workers. On August 2, the Employer assigned, in writing, all of the work relating to the installation of the containment system to employees represented by Pipefitters. During a telephone conversation on August 14, Pipefitters' business manager, James O'Mara, advised Donald Hardin, the Employer's senior vice president, that if the containment system work were reassigned, the Pipefitters would strike or picket. In a letter dated August 16, Pipefitters Business Manager James O'Mara advised the Employer that if the piping containment work were assigned to employees represented by Sheet Metal Workers, Pipefitters would "take whatever action is necessary, including picketing or striking."

The second disputed task at the MEMC facility involves the attachment of test ports to installed duct work in the clean rooms at that facility. The test port consists of a capped pipe nipple attached with a flange and gasket over a hole cut in the duct work. The test ports in the clean rooms are to be used to insert temperature or humidity recording device probes into the air stream in order to maintain the proper temperature and humidity of the air. Approximately 30 of the 90 test ports required field assembly since the parts for the ports had not arrived at the time the ducts were fabricated. An unknown number of test ports were installed by employees represented by Sheet Metal Workers in July, while employees represented by Pipefitters were not working.

Following a meeting with both Unions on July 18, at which both Unions claimed the work involved, the Employer, in a letter dated August 2, assigned the remaining test ports to employees represented by Pipefitters. On August 5, Sheet Metal Workers filed a grievance with the LJAB, contending that the work should have been assigned to employees represented by Sheet Metal Workers. During a telephone conversation on August 14, O'Mara informed Hardin that, if the test port work were reassigned, Pipefitters would picket or strike to make sure that the work remained with Pipefitters-represented employees. In a letter dated August 16, Pipefitters' business manager, O'Mara, claimed the work involved and advised the Employer that, if the test port work were reassigned, Pipefitters would "take whatever action is necessary, including picketing or striking."

The third disputed work task at MEMC involves the installation of nine small reactor scrubber systems. The scrubbers are installed to remove contaminants from the exhaust of reactors in which a chemical process takes

place before releasing the exhaust to the atmosphere. During a meeting on or about July 18, the Employer and representatives from both Unions briefly discussed the installation of the nine small scrubber reactor systems, and both Unions claimed the work involved. In July, the Employer assigned the entire installation of the nine small scrubber reactor systems to employees represented by Pipefitters. On July 30, Sheet Metal Workers filed a grievance with the LJAB, contending that the work should have been assigned to employees represented by Sheet Metal Workers. In a letter dated August 20, the Employer made a written assignment of the scrubber work to employees represented by Pipefitters. During a telephone conversation on August 14, O'Mara informed Hardin that, if the scrubber work were reassigned, Pipefitters would picket or strike to make sure that the work remained with Pipefitters-represented employees. In a letter dated August 20, Pipefitters Business Manager O'Mara advised the Employer that, if the work were reassigned, Pipefitters would "take whatever action is necessary, including picketing or striking."

On August 23, Sheet Metal Workers withdrew its grievance relating to the scrubber work; the Employer was notified by SMACNA that Sheet Metal Workers had withdrawn this grievance. The Employer had no subsequent discussion with Sheet Metal Workers about this grievance or its prior claim, but Sheet Metal Workers' position on the record is that it does not claim the scrubber work at the MEMC site as described in the notice of hearing.

*b. Automated Data Processing Facility in Sunset Hills, Missouri*

At the Automated Data Processing (ADP) facility, the Employer, Grossman, has a contract with the Bakewell Corporation for the HVAC installation for that facility, including the installation of three nonducted cooling units in the mainframe computer room. The units involved consist of a refrigerant compressor with coils, fan and filter, and a box which is placed on the raised floor to discharge air directly into the area below the floor in order to pressurize that area and cool the computer room. The Employer began work at this project in July.

On July 24, the Employer participated in a meeting of mechanical contractors and Pipefitters, at which Pipefitters claimed all of the installation work involved. On an unknown date, and in unknown circumstances, Sheet Metal Workers verbally claimed 50 percent of the installation work to the Employer's general manager, Rich Eckart. On July 31, the Employer assigned the work in writing to employees represented by Pipefitters. In a letter dated August 1, Sheet Metal Workers claimed that, based on contractual language, the work in question is to be installed by a composite crew. During a telephone conversation on August 14, O'Mara advised Hardin that Pipefitters would strike or picket to make sure that the

work was not reassigned. In a letter dated August 16, O'Mara advised the Employer that, if the work were reassigned to Sheet Metal Workers, Pipefitters would "take whatever action is necessary, including picketing or striking."

*c. Harrah's Casino Project in Maryland Heights, Missouri*

The Harrah's Casino project includes an eight-story hotel and two gaming riverboats. Grossman's contract includes the installation of vertical stack fan coil units in the guest rooms of the hotel. These units are floor mounted, nonducted heating and air-conditioning units for the individual rooms which may be adjusted by the hotel guests. The units are connected vertically from floor to floor by hot and chilled water supply pipes which heat or cool coils in the unit. The units use no outside air and use an internal fan to blow heated or cooled air directly into the room.

The units arrived on the jobsite on July 30, and were initially assigned for installation to employees represented by Pipefitters. On August 7, Hardin and Eckart of the Employer met with John Lorson, a business agent for Sheet Metal Workers. Sheet Metal Workers claimed 50 percent of the installation work as part of a 50/50 composite crew. On August 16, Sheet Metal Workers filed a grievance with the LJAB contending that the Employer's assignment of this work was in violation of the Sheet Metal Workers' collective-bargaining agreement. In a letter dated August 20, the Employer assigned all of the vertical stack fan coil unit installations to employees represented by Pipefitters, and all of the installation of the supply and return grills on the fan coil units to employees represented by Sheet Metal Workers.

During a telephone conversation on August 14, O'Mara advised Hardin that Pipefitters would strike or picket to make sure that the vertical stack fan coil unit installation work was not reassigned. In a letter dated August 20, O'Mara advised the Employer that if this work were reassigned to Sheet Metal Workers, Pipefitters would "take whatever action is necessary, including picketing or striking."

2. Case 14-CD-936

The Employer, C & R, is a mechanical subcontractor to McCarthy Construction, providing a heating and air-conditioning system for the Washington University School of Law building in St. Louis County, Missouri. The project originally included the installation of Liebert Mini-Mate nonducted air-conditioning units for the law school computer room. On or about May 7 or 8, Sheet Metal Workers' business representative, John Lorson, advised the Employer that Sheet Metal Workers claimed one-half of that installation as part of a 50/50 composite crew. Claims for the work were made by Sheet Metal Workers' steward and Pipefitters' steward on the job. Subsequent to those events, the Liebert units were elimi-

nated from the job plans. However, during the week of August 18, Washington University returned to the original plans and instructed the Employer to install the Liebert units. Thereafter, claims for the work were made by Sheet Metal Workers steward on the job and by a business representative. The Employer made a verbal assignment of the work to employees represented by Pipefitters, and on August 22, Pipefitters' business manager, O'Mara, advised the Employer that if the work of installing the Liebert Mini-Mate self-contained computer room at Washington University School of Law were reassigned to Sheet Metal Workers, Pipefitters would "take whatever action is necessary, including picketing or striking."

3. Case 14-CD-937

*a. Harrah's Casino project in Maryland Heights, Missouri*

At the same hotel and casino complex involved in Case 14-CD-935, Grossman, the Employer, has a contract that includes the installation of variable air volume (VAV) boxes with attached hot water heater reheat booster coils used to balance the air flow and to reheat the air for the ventilation and heating system. Approximately 30 boxes consisting of a booster fan and the attached hot water coil were to be installed in the complex.

On or about August 7, Sheet Metal Workers' business representative, Lorson, during a meeting with the Employer, claimed all of the installation involved. On or about August 12, Pipefitters' business representative, Dick Sullivan, claimed one-half of the work as part of a 50/50 composite crew. The Employer assigned the work to a 50/50 composite crew, and advised both Unions of that assignment. In a grievance filed on August 16 by Sheet Metal Workers (which also included the vertical fan coil units and booster re-heat coils at the Harrah's project described above), Sheet Metal Workers contended that the 50/50 composite crew assignment was in violation of the collective-bargaining agreement. On August 28, the Employer made a written assignment of the work by letter to both Unions, assigning the work to a 50/50 composite crew. During a telephone conversation on or about August 28, O'Mara informed Grossman's senior vice president, Hardin, that if the work on the VAV boxes was reassigned, Pipefitters would strike or picket to make sure that the assignment remained as a 50/50 composite crew. In a letter dated September 3, O'Mara advised the Employer that, if all of the VAV boxes work were reassigned to Sheet Metal Workers, Pipefitters would "do what is legally necessary to protect [its] work jurisdiction, including striking or picketing."

*b. Anheuser Busch project in St. Louis, Missouri*

At building #181 of the Anheuser Busch brewery complex in St. Louis, Missouri, the Employer, Grossman, has a contract with Sachs Electric Company to

to assist in the installation of an emergency diesel generator and to install the exhaust system for that generator, using a “metalbestos” exhaust flue. The flue consists of an inside pipe insulated from an outside pipe to exhaust the engine gases. The installation of the metalbestos flue was initially assigned to employees represented by Pipefitters in July 1996, but was subsequently claimed by Sheet Metal Workers’ business representatives during a conversation with the Employer on or about August 28. Also, on or about August 28, the Employer contacted Pipefitters’ business representative, Mike O’Mara, who claimed all of the installation involved. In a letter dated August 28, the Employer assigned all of the installation to employees represented by Pipefitters. During a telephone conversation on August 28, James O’Mara advised Hardin that if the Employer reassigned installation of the generator exhaust system, Pipefitters would strike or picket to make sure that the work remained with employees represented by Pipefitters. In a letter dated September 3, James O’Mara advised the Employer that if the Employer reassigned the installation of the metalbestos exhaust system, Pipefitters would “engage in strikes or picketing if necessary to protect [its] work jurisdiction on this job.”

#### B. Work in Dispute

The work in dispute is identified in the order consolidating cases and notice of hearing. In Case 14–CD–935, the work in dispute involves, at the MEMC facility in O’Fallon, Missouri, the installation of a piping containment system for separating piping and potential leaks of noxious fumes from the clean room; attachment of test ports to installed duct work in clean rooms for gauging temperature and humidity regulation compliance; and installation of scrubbers to reactor systems for cleaning the air and contaminants produced by reactors. At the Automated Data Processing facility in Sunset Hills, Missouri, the work in dispute involves installation of nonducted cooling units in the mainframe computer room. At the Harrah’s Casino project in Maryland Heights, Missouri, the work in dispute involves installation of vertical stack fan coil units in the gambling complex hotel.

In Case 14–CD–936, the work in dispute involves installation of a small, nonducted air-conditioning unit at the construction site of the Washington University School of Law in St. Louis, Missouri.

In Case 14–CD–937, the work in dispute involves the installation of variable air volume boxes with attached hot water reheat booster coils in the gambling complex hotel and casino at the Harrah’s Casino project in Maryland Heights, Missouri; and the installation of a metalbestos emergency exhaust flue at building #181 at the Anheuser-Busch project in St. Louis, Missouri.

#### C. Contentions of the Parties

Employers Grossman and C & R contend that there is reasonable cause to believe that Pipefitters violated Section 8(b)(4)(D) of the Act and, therefore, the Board must make a determination of the merits of the disputes. Grossman and C & R contend that the factors of employer preference and past practice, relative skills, and area and industry practice support an award of the work to employees represented by Pipefitters. With respect to the disputed work at the Washington University School of Law site, the Employer, C & R, also argues that economy and efficiency of operations favors an award of the work to employees represented by Pipefitters. And, with respect to the dispute relating to the installation of vertical stack fan coil units at Harrah’s Casino, the Employer, Grossman, argues that economy and efficiency favors an award of the work to employees represented by Pipefitters. Employers Grossman and C & R also refer to Pipefitters’ argument that Pipefitters’ collective-bargaining agreement includes all of the disputed work. Also, citing *Pipefitters Local 562 (Systemaire, Inc.)*, 320 NLRB 124 (1995), which involved a similar work dispute, the Employers contend that the Board should issue a broad order with respect to the installation of the metalbestos emergency exhaust flue in Case 14–CD–937.

Pipefitters contends that the Employers have made proper assignments of the disputed work to employees represented by Pipefitters; and, citing *Pipefitters Local 562 (Systemaire)*, supra, contend that the Board should issue a broad order, particularly with respect to the installation of the metalbestos emergency exhaust flue in Case 14–CD–937.

Sheet Metal Workers contends that the notice of hearing in these consolidated cases should be quashed, alleging that Pipefitters’ threats are a sham to invoke the Board’s authority and obtain a determination favoring the current assignments of the disputed work to employees represented by Pipefitters. Sheet Metal Workers further contends that the Employer’s failure to request Section 10(l) relief against possible threats by Pipefitters indicates that the threats were hollow and were not intended to be implemented. Sheet Metal Workers thus asserts that there is therefore no reasonable cause to believe that Section 8(b)(4)(D) has been violated.

Sheet Metal Workers alternatively contends that, if the Board finds the statute applicable and determines the disputes, the work should be awarded to employees represented by Sheet Metal Workers based on the factors of collective-bargaining agreement language, a 1956 jurisdictional agreement between the two unions, and a 1995 Sheet Metal Industry National Joint Adjustment Board determination. Sheet Metal Workers additionally contends that the Board should issue a broad award with respect to all of the disputed work to employees repre-

sented by Sheet Metal Workers. Sheet Metal Workers has filed a motion for oral argument.<sup>3</sup>

#### D. Applicability of the Statute

Before the Board may proceed with a determination of disputes pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for voluntary adjustment of the dispute. “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.” *Plumbers Local 562 (C & R Heating & Service Co.)*, 328 NLRB No. 176, slip op. at 1 (1999).

In Case 14–CD–935, Pipefitters threatened orally and in writing to strike or picket if the Employer did anything to change the assignments of the disputed work at the MEMC project, the Automated Data Processing Facility, or the Harrah’s Casino project. In Case 14–CD–936, Pipefitters threatened orally and in writing to strike or picket if the Employer did anything to change the assignment of the disputed work at the Washington University School of Law jobsite. In Case 14–CD–937, Pipefitters threatened orally and in writing to strike or picket if the Employer did anything to change the assignments of the disputed work at the Harrah’s Casino project or the Anheuser Busch project.

Sheet Metal Workers contends Pipefitters’ threats were shams. As detailed above, however, the statements made by representatives of Pipefitters clearly constitute threats of economic action, and the Employers’ representatives testified that the Employers took the threats seriously. Apart from its assertions, Sheet Metal Workers has brought forth no evidence establishing that Pipefitters’ threats were not genuine or made in collusion with the Employer. See *Plumbers Local 562 (C & R Heating & Service Co.)*, supra, 328 NLRB No. 176, slip op. at 1–2, and cases cited therein.

In light of the above, we find reasonable cause to believe that Section 8(b)(4)(D) has been violated. The parties have stipulated that there exists no agreed-upon method for voluntary adjustment of the disputes within the meaning of Section 10(k).

As noted above, Sheet Metal Workers on August 23 withdrew its grievance relating to the installation of the scrubber reactor systems at the MEMC facility. The Employer, Grossman, was notified by SMACNA that this grievance had been withdrawn. Further, at the hearing, counsel for Sheet Metal Workers stated that Sheet Metal Workers did not claim the installation of the scrubber reactor systems at the MEMC facility. Sheet

Metal Workers had no discussions with Grossman about its claim of the work during a July 18 meeting with Grossman and a Pipefitters’ representative or thereafter.

The “party asserting that a disclaimer has occurred which negates the existence of a jurisdictional dispute has the burden to prove ‘a clear, unequivocal, and unqualified disclaimer of all interest in the work in dispute.’” See *Machinists (Hudson General Corp.)*, 326 NLRB 62 (1998), and cases cited therein. We find that Sheet Metal Workers’ statement on the record that it was not claiming the work of installing scrubber reactors at the MEMC facility, coupled with the earlier withdrawal of the grievance relating to that disputed work, does not constitute an effective disclaimer or renunciation of Sheet Metal Workers’ claim to that work at the MEMC facility. First, the Employer’s witness testified that he was not informed by Sheet Metal Workers that it was not interested in performing the scrubber installation work. Second, Sheet Metal Workers’ statement on the record that it was not claiming the scrubber installation work was made only after counsel for Sheet Metal Workers had repeatedly answered with equivocal language when asked on several occasions by the hearing officer if the withdrawal of the grievance constituted a disclaimer of the scrubber installation work. Finally, in its posthearing brief, Sheet Metal Workers does not assert that it is disclaiming the scrubber installation work—it only notes that the grievance relating to that work was withdrawn. Thus, there was no effective disclaimer of the scrubber installation work at the MEMC facility.

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 these disputes:

##### Case 14–CD–935

#### 1. Certification and collective-bargaining agreements

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

As noted above, Grossman, the Employer, is a signatory to a multiemployer collective-bargaining agreement with Pipefitters, which is effective from January 1, 1996,

<sup>3</sup> Sheet Metal Workers’ motion for oral argument is denied, as the record and briefs adequately present the issues and positions of the parties.

through May 31, 2000. As further noted above, at the time of the hearing in this proceeding, SMACNA and Sheet Metal Workers had agreed to contract terms for a new collective-bargaining agreement effective May 1, 1996, through August 31, 2001. The new contract was being prepared for printing and final signatures, but the wage provisions had already been implemented.

Pipefitters' agreement states that its terms apply to work by the signatory employees within the jurisdiction of Pipefitters, which is described in the contract at article 5, section 8, to include, inter alia:

The receiving, handling, rigging, unloading, storing, assembling and erecting of all product recovery systems, materials, equipment, fans, blowers, pumps, tanks, bins, hoppers, silos, receivers, classifiers, scrubbers, cyclones, separators, alleviators, etc. The fabrication of all piping, chuteing [sic], spouting, launderers, ducting, etc., and all supports and hangers pertaining to such product recovery systems.

Pipefitters' agreement further states that the jurisdiction of Pipefitters includes, 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 charging and testing, servicing of all work after completion"; and "piping herein specified means all pipe made from metals, tile, glass, rubber, plastics, wood, or any other kind of material, or product manufactured into pipe, usable in the pipe fitting industry, regardless of size or shape." Pipefitters' jurisdiction is also described to include, inter alia, "the handling and using of all tools and equipment that may be necessary for the erection and installation of all work and materials used in the pipe fitting industry"; "the laying out and cutting of all holes, chases and channels, the setting and erection of bolts, inserts, strands, brackets, supports, sleeves, thimbles, hangers, conduit and boxes used in connection with pipe fitting industry"; "all process piping for refining, manufacturing, industrial, and shipping purposes, of every character and description"; "all pneumatic tub work, and all piping for carrying systems by vacuum, compressed air, steam, water, or any other method"; "all piping for sterilizing, chemical treatment, deodorizing, and all cleaning systems of every description, and laundries for all purposes"; and "all piping for power, or heating purposes, either by water, air, steam, gas, oil, chemicals, or any other method."

The terms of the expired agreement and successor agreement with Sheet Metal Workers apply to employees engaged in, inter alia:

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, fittings, dampers, casings, recess boxes, outlets, radiator enclosures, exhausts, ventilators, frames,

grilles, louvers, registers, cabinets, fans and motors; air washers, filters, air brushes, housings, air conditioning chambers, all setting and handing [sic] of air conditioning units, unit heaters or air-veyor systems and air-handling systems regardless of material used including all equipment and/or reinforcements in connection therewith; testing and balancing of all air-handling equipment, mechanical or otherwise, in connection with or incidental to the proper installation and operation of said systems, and all duct connections to and from same.

Sheet Metal Workers' expired and agreed-upon successor agreements further state that the agreement applies, inter alia, to

All employees of the employer engaged in but not limited to the . . . manufacture, fabrication, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or non-ferrous metal work and all other materials used in lieu thereof and of all air-veyor systems and air-handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith . . . all lagging over insulation and duct lining . . . [and] testing and balancing of all air-handling equipment and duct work..

Sheet Metal Workers' agreed-upon successor agreement includes an addendum referring to "air conditioning units, including raised floor computer units regardless if duct connected or not."

In view of the above-quoted provisions of its collective-bargaining agreement with the Employer, we find that Pipefitters' collective-bargaining agreement arguably covers each disputed work task at the MEMC project, the disputed work at the Automated Data Processing Facility, and the disputed work at the Harrah's Casino project. In view of the above-quoted provisions of its expired and agreed-upon collective-bargaining agreements with the Employer, we find that Sheet Metal Workers' agreement arguably covers each disputed work task at the MEMC project, the disputed work at the Automated Data Processing Facility, and the disputed work at the Harrah's Casino project.

Therefore, we find that each collective-bargaining agreement arguably covers the disputed work in Case 14-CD-935 and that this factor neither favors nor disfavors the Employer's assignment the disputed work.<sup>4</sup>

<sup>4</sup> In finding that the factor of collective-bargaining agreements does not favor an award of the disputed work to employees represented by either Pipefitters or Sheet Metal Workers, Member Brame considers only Pipefitters' current collective-bargaining agreement and Sheet Metal Workers' agreed-upon successor agreement. See *Laborers Local 210 (Concrete Cutting & Breaking)*, 328 NLRB No. 182, slip op. at 2 (1999).

## 2. Employer preference and past practice

The Employer stated a preference for having each disputed work task at the MEMC facility assigned to employees represented by Pipefitters. Additionally, the Employer stated a preference for having the disputed work at the Automated Data Processing Facility and the disputed work at the Harrah's Casino project assigned to employees represented by Pipefitters.

Regarding the disputed work at the MEMC facility, the record reflects that the Employer's past practice has been to use employees represented by Pipefitters to install a containment system where the pipes had been installed by employees represented by Pipefitters; to assign test port installation to employees represented by Pipefitters where the ports are to be used in conjunction with controls installed by employees represented by Pipefitters; and to assign the installation of small reactor scrubber systems to employees represented by Pipefitters when the inlet and outlet of the scrubbers include standard piping parts.

Regarding the disputed work at the Automated Data Processing Facility, the record reflects that the Employer's past practice has been to assign the installation of nonducted cooling units to employees represented by Pipefitters.

Regarding the disputed work at the Harrah's Casino project, the record reflects that the Employer's past practice has been to assign the installation of floor mounted, nonducted heating and air-conditioning units to employees represented by Pipefitters where the units are connected by installed pipes.

Therefore, employer preference and past practice favors the assignment of the disputed work in Case 14-CD-935 to employees represented by Pipefitters.

## 3. Area and industry practice

Regarding the disputed work at the MEMC facility, the Employer presented evidence that both the area and industry practice is to assign the installation of containment systems to employees represented by Pipefitters; that it is the area and industry practice that where employees represented by Pipefitters install control systems such as the temperature and humidity controls, those employees will also install the test ports used by such equipment; and that it is the area and industry practice that employees represented by Pipefitters install small reactor scrubber systems.

Regarding the disputed work at the Automated Data Processing facility, the Employer presented evidence that it is the area and industry practice to use employees represented by Pipefitters to install nonducted cooling units.

The Employer also presented evidence regarding the disputed work at the Harrah's Casino project that it is the area and industry practice to assign vertical stack fan coil unit installations to employees represented by Pipefitters.

Therefore, the factor of area and industry practice supports an award of the disputed work to employees represented by Pipefitters.

## 4. Relative skills

With respect to the disputed work at the MEMC facility involving the installation of the small reactor scrubber systems, the record reflects that an Employer's witness testified that the pipe and fittings used in the installation of the scrubbers are the same pipe and fittings involved in other piping at the MEMC facility. The Employer's witness further testified that employees represented by Pipefitters have better skills and abilities in using such material than do employees represented by Sheet Metal Workers. Therefore, we find that this factor favors an award of the disputed work involving the installation of small reactor scrubber systems at the MEMC site to employees represented by Pipefitters.

With respect to the other disputed work at the MEMC facility and the disputed work at the Automated Data Processing facility and the Harrah's Casino project, the record reflects that both employees represented by Pipefitters and Sheet Metal Workers arguably possess the necessary skills to perform the work in dispute. Therefore, with the exception of the installation of the small reactor scrubbers at the MEMC facility, this factor does not favor an award of the work to either group of employees.

## 5. Economy and efficiency of operations

The record does not conclusively demonstrate that it would be more economical or efficient for either employees represented by Pipefitters or employees represented by Sheet Metal Workers to perform the disputed work at the MEMC facility, the Automated Data Processing facility, or the Harrah's Casino Project. Specifically, contrary to the Employer's assertion that it would be more efficient for employees represented by Pipefitters to install the vertical stack fan coil units without duct work at Harrah's Casino, there is insufficient evidence in the record to support such a finding. Therefore, this factor does not favor an award of the work to either group of employees.

## 6. Joint Board determinations

Sheet Metal Workers contends that a 1995 determination of the National Joint Adjustment Board for the Sheet Metal Industry (NJAB), in which Grossman, the Employer, was found to have violated the Sheet Metal Workers' collective-bargaining agreement by not assigning the installation of Liebert units for computer rooms to employees represented by Sheet Metal Workers, favors an award of the disputed work at the Automated Data Processing facility to employees represented by Sheet Metal Workers.

This 1995 award involved a dispute that predated the disputes in the instant case. Further, there is no evidence

that Pipefitters had the opportunity to present evidence relating to the jurisdictional disputes at issue here at the NJAB proceeding. Therefore, we find that the 1995 NJAB award does not favor an award of the disputed work at the Automated Data Processing facility to either group of employees.

#### 7. Interunion agreements

The record includes a 1956 agreement between the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry and the Sheet Metal Workers' International Association. The record also includes an April 5, 1966 addendum to the 1956 interunion agreement.

The 1956 interunion agreement states, in part, that

[t]he installation of completed and/or knock-down package type heating and cooling units consisting of fans, filters, refrigeration condensing units, and dampers, with heating coils and/or cooling coils assembled therein, whether or not in connection with a duct system, shall be unloaded and installed by a composite crew consisting of an equal number of [employees represented by Sheet Metal Workers and employees represented by Pipefitters], with the understanding that the [employees represented by Sheet Metal Workers] shall install any duct work in connection with the unit and [employees represented by Pipefitters] shall install all piping in connection with the units.

The 1956 interunion agreement further states that

[w]here the booster coil is hung separately from the duct work, the installation of the booster coil is the work of [employees represented by Pipefitters] where the booster coil is inserted in the duct work, and not supported separately, the installation of the booster coil is the work of the Sheet Metal Workers. The installation of free-standing coils, regardless of whether they are built within a sheet metal housing, is the work of [employees represented by Pipefitters].

The April 5, 1966 addendum to the 1956 interunion agreement states, in part, that, in the context of the installation of certain heating units, a "duct system is any air handling duct in connection with or attached thereto other than directional ells or nozzles."

The 1956 interunion agreement and the April 5, 1966 addendum to that agreement arguably support an award of the disputed work at the three sites to either group of employees. In addition, the record does not show that the Employer 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. Accordingly, we cannot find that the interunion agreement and its April 5, 1966 addendum favors or disfavors the current assignment of the disputed work to employees represented by Pipefitters.

#### Case 14–CD–936

##### 1. Certifications and collective-bargaining agreements

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

As noted above, C & R, the Employer, is a signatory to a multiemployer collective-bargaining agreement with Pipefitters, which is effective from January 1, 1996, through May 31, 2000. As further noted above, at the time of the hearing in this proceeding, SMACNA and Sheet Metal Workers had agreed to contract terms for a new collective-bargaining agreement effective May 1, 1996, through August 31, 2001. The new contract was being prepared for printing and final signatures, but the wage provisions had already been implemented.

Pipefitters' agreement states that its terms apply to work by the signatory employees within the jurisdiction of Pipefitters, which is described in the contract at article 5, section 8, to include, *inter alia*:

The receiving, handling, rigging, unloading, storing, assembling and erecting of all product recovery systems, materials, equipment, fans, blowers, pumps, tanks, bins, hoppers, silos, receivers, classifiers, scrubbers, cyclones, separators, alleviators, etc. The fabrication of all piping, chuteing [sic], spouting, launderers, ducting, etc., and all supports and hangers pertaining to such product recovery systems.

The Pipefitters' agreement further states that the jurisdiction of the Pipefitters includes, *inter alia*, "[a]ll 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 charging and testing, servicing of all work after completion"; and "piping herein specified means all pipe made from metals, tile, glass, rubber, plastics, wood, or any other kind of material, or product manufactured into pipe, usable in the pipe fitting industry, regardless of size or shape." Pipefitters' jurisdiction is also described to include, *inter alia*, "[t]he handling and using of all tools and equipment that may be necessary for the erection and installation of all work and materials used in the pipe fitting industry"; "[t]he laying out and cutting of all holes, chases and channels, the setting and erection of bolts, inserts, strands, brackets, supports, sleeves, thimbles, hangers, conduit and boxes used in connection with pipe fitting industry"; "[a]ll process piping for refining, manufacturing, industrial, and shipping purposes, of every character and description"; "[a]ll pneumatic tub work, and all piping for carrying systems by vacuum, compressed air, steam, water, or any other method"; "[a]ll piping for sterilizing, chemical treatment, deodorizing, and all cleaning systems of every description, and laundries for all purposes"; and "[a]ll piping for power, or heating

purposes, either by water, air, steam, gas, oil, chemicals, or any other method.”

The terms of the expired agreement and successor agreement with Sheet Metal Workers apply to employees engaged in, *inter alia*:

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, fittings, dampers, casings, recess boxes, outlets, radiator enclosures, exhausts, ventilators, frames, grilles, louvers, registers, cabinets, fans and motors; air washers, filters, air brushes, housings, air conditioning chambers, all setting and handing [sic] of air conditioning units, unit heaters or air-veyor systems and air-handling systems regardless of material used including all equipment and/or reinforcements in connection therewith; testing and balancing of all air-handling equipment, mechanical or otherwise, in connection with or incidental to the proper installation and operation of said systems, and all duct connections to and from same.

The Sheet Metal Workers’ expired and agreed-upon successor agreements further state that the agreement applies, *inter alia*, to

All employees of the employer engaged in but not limited to the . . . manufacture, fabrication, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or non-ferrous metal work and all other materials used in lieu thereof and of all air-veyor systems and air-handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith . . . all lagging over insulation and duct lining . . . [and] testing and balancing of all air-handling equipment and duct work.

The Sheet Metal Workers’ agreed-upon successor agreement includes an addendum referring to “air conditioning units, including raised floor computer units regardless if duct connected or not.”

In view of the above-quoted provisions, we find that Pipefitters’ contract arguably covers the disputed work at the Washington University School of Law jobsite. We also find that, in view of the above-quoted provisions of its expired and agreed-upon collective-bargaining agreements with the Employer, Sheet Metal Workers’ agreement arguably covers the disputed work at the Washington University School of Law jobsite. Accordingly, we find that the factor of collective-bargaining agreements neither favors nor disfavors an award of the disputed work to either group of employees.<sup>5</sup>

<sup>5</sup> See fn. 4, *supra*.

## 2. Employer preference and past practice

The Employer, C & R, stated a preference for having employees represented by Pipefitters install the non-ducted air-conditioning units. The Employer has installed similar air-conditioning units in the past and where, as here, there is no duct work attached to the unit, the Employer’s past practice has been to assign that work to employees represented by Pipefitters.

Accordingly, employer preference and past practice favor an award of the disputed work to employees represented by Pipefitters.

## 3. Area and industry practice

An Employer witness testified that the area practice is to assign the installation of nonducted air-conditioning units to employees represented by Pipefitters where both employees represented by Pipefitters and employees represented by Sheet Metal Workers are on the job.

Accordingly, this factor favors an award of the disputed work to employees represented by Pipefitters.

## 4. Relative skills

The record reflects that both employees represented by the Pipefitters and employees represented by Sheet Metal Workers possess the necessary skills to perform the work in dispute. Accordingly, this factor does not favor an award of the disputed work to either group of employees.

## 5. Economy and efficiency of operations

An Employer witness testified that it would be more efficient for employees represented by Pipefitters to install the air conditioning units since the remote compressor unit attached to the unit is installed by employees represented by Pipefitters. However, we do not find that the assertion by the Employer’s witness, without further supporting evidence on the record, demonstrates that it would be more economical and efficient for employees represented by Pipefitters to install the air-conditioning units. Accordingly, we find that this factor neither favors nor disfavors an award of the disputed work to either group of employees.

## 6. Joint Board determinations

Sheet Metal Workers contends that the 1995 NJAB determination referred to above, in which Grossman Contracting Company was found to have violated the Sheet Metal Workers collective-bargaining agreement by not assigning the Liebert unit installation work for computer rooms to employees represented by Sheet Metal Workers, favors an award of the disputed work at the Washington University School of Law site to employees represented by Sheet Metal Workers.

This 1995 NJAB for the Sheet Metal Industry proceeding involved a dispute that predated the disputes in the instant case. Further, the 1995 proceeding did not involve C & R. Also, there is no evidence that Pipefitters had the opportunity to present evidence relating to the jurisdictional disputes at issue here at the NJAB proceed-

ing. Therefore, we find that the 1995 NJAB award does not favor an award of the disputed work at the Automated Data Processing facility to either group of employees.

#### 7. Interunion agreements

The record includes a 1956 agreement between the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry and the Sheet Metal Workers' International Association. The record also includes an April 5, 1966 addendum to the 1956 interunion agreement.

The 1956 interunion agreement states, in part, that

[t]he installation of completed and/or knock-down package type heating and cooling units consisting of fans, filters, refrigeration condensing units, and dampers, with heating coils and/or cooling coils assembled therein, whether or not in connection with a duct system shall be unloaded and installed by a composite crew consisting of an equal number of [employees represented by Sheet Metal Workers and employees represented by Pipefitters], with the understanding that the [employees represented by Sheet Metal Workers] shall install any duct work in connection with the unit and [employees represented by Pipefitters] shall install all piping in connection with the units.

The April 5, 1966 addendum to the 1956 interunion agreement states, in part, that, in the context of the installation of certain heating units, a "duct system is any air handling duct in connection with or attached thereto other than directional ells or nozzles."

The 1956 interunion agreement and the April 5, 1966 addendum arguably support an award of the disputed work to either group of employees. In addition, the record does not show the Employer 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. Accordingly, this factor does not favor or disfavor an award of the disputed work to employees represented by Pipefitters.

#### Case 14-CD-937

##### 1. Certifications and collective-bargaining agreements

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

As noted above, Grossman, the Employer, is a signatory to a multiemployer collective-bargaining agreement with Pipefitters, which is effective from January 1, 1996, through May 31, 2000. As further noted above, at the time of the hearing in this proceeding, SMACNA and Sheet Metal Workers had agreed to contract terms for a new collective-bargaining agreement effective May 1, 1996, through August 31, 2001. The new contract was

being prepared for printing and final signatures, but the wage provisions had already been implemented.

Pipefitters' agreement states that its terms apply to work by the signatory employees within the jurisdiction of Pipefitters, which is described in the contract to include, at article 5, section 8, to include, inter alia:

The receiving, handling, rigging, unloading, storing, assembling and erecting of all product recovery systems, materials, equipment, fans, blowers, pumps, tanks, bins, hoppers, silos, receivers, classifiers, scrubbers, cyclones, separators, alleviators, etc. The fabrication of all piping, chuteing [sic], spouting, launderers, ducting, etc., and all supports and hangers pertaining to such product recovery systems.

Pipefitters' agreement further states that the jurisdiction of Pipefitters includes, inter alia, "[a]ll 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 charging and testing, servicing of all work after completion"; and "piping herein specified means all pipe made from metals, tile, glass, rubber, plastics, wood, or any other kind of material, or product manufactured into pipe, usable in the pipe fitting industry, regardless of size or shape." Pipefitters' jurisdiction is also described to include, inter alia, "[t]he handling and using of all tools and equipment that may be necessary for the erection and installation of all work and materials used in the pipe fitting industry"; "[t]he laying out and cutting of all holes, chases and channels, the setting and erection of bolts, inserts, strands, brackets, supports, sleeves, thimbles, hangers, conduit and boxes used in connection with pipe fitting industry"; "[a]ll process piping for refining, manufacturing, industrial, and shipping purposes, of every character and description"; "[a]ll pneumatic tub work, and all piping for carrying systems by vacuum, compressed air, steam, water, or any other method"; "[a]ll piping for sterilizing, chemical treatment, deodorizing, and all cleaning systems of every description, and laundries for all purposes"; and "[a]ll piping for power, or heating purposes, either by water, air, steam, gas, oil, chemicals, or any other method."

The terms of the expired agreement and successor agreement with Sheet Metal Workers apply to employees engaged in, inter alia:

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, fittings, dampers, casings, recess boxes, outlets, radiator enclosures, exhausts, ventilators, frames, grilles, louvers, registers, cabinets, fans and motors; air washers, filters, air brushes, housings, air conditioning chambers, all setting and handing [sic] of air conditioning units, unit heaters or air-veyor systems and air-handling systems regardless of material used including

all equipment and/or reinforcements in connection therewith; testing and balancing of all air-handling equipment, mechanical or otherwise, in connection with or incidental to the proper installation and operation of said systems, and all duct connections to and from same.

Sheet Metal Workers' expired and agreed-upon successor agreements further state that the agreement applies, inter alia, to

All employees of the employer engaged in but not limited to the . . . manufacture, fabrication, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or non-ferrous metal work and all other materials used in lieu thereof and of all air-veyor systems and air-handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith . . . all lagging over insulation and duct lining . . . [and] testing and balancing of all air-handling equipment and duct work.

Sheet Metal Workers' agreed-upon successor agreement includes an addendum referring to "air conditioning units, including raised floor computer units regardless if duct connected or not."

In view of the above-quoted provisions, Pipefitters' contract arguably covers the disputed work at the Harrah's Casino site and the Anheuser Busch project. And, in view of the above-quoted provisions of its expired and agreed-upon collective-bargaining agreements with the Employer, we find that Sheet Metal Workers' agreement arguably covers the disputed work at the Harrah's Casino site and the Anheuser Busch project.

Accordingly, the factor of collective-bargaining agreements neither favors nor disfavors an award of the disputed work at the Harrah's Casino site and the Anheuser Busch project to either group of employees.<sup>6</sup>

## 2. Employer preference and past practice

The Employer, Grossman, stated a preference for assigning the installation of variable air volume (VAV) boxes with attached hot water reheat booster coils to a 50/50 composite crew of employees represented by the Pipefitters and employees represented by Sheet Metal Workers. The Employer has previously installed the same units, including reheat booster coils, and has assigned the installation of such units to a 50/50 composite crew. The Employer also stated a preference for assigning the installation of a metalbestos emergency exhaust flue to employees represented by Pipefitters. The Employer's past practice has been to assign the installation of exhaust systems off of emergency generator systems to employees represented by Pipefitters.

<sup>6</sup> See fn. 4, supra.

Accordingly, this factor favors an award of the disputed work at the Harrah's Casino site to a 50/50 composite crew of employees represented by Pipefitters and employees represented by Sheet Metal Workers. This factor also favors an award of the work in dispute at the Anheuser Busch site to employees represented by Pipefitters.

## 3. Area and industry practice

The record evidence reflects that it is the area and industry practice to assign the installation of emergency generator exhaust systems using a metalbestos exhaust flue to employees represented by Pipefitters. See *Pipefitters Local 562 (Systemaire, Inc.)*, 320 NLRB 124, 129 (1995). The record evidence also reflects that the area and industry practice is to assign the installation of VAV boxes with attached hot water reheat booster coils installed at the factory to a composite crew of employees represented by Pipefitters and Sheet Metal Workers.

Accordingly, this factor favors an award of the disputed work at the Anheuser Busch jobsite to employees represented by the Pipefitters and an award of the disputed work at the Harrah's Casino site to a 50/50 composite crew of employees represented by Pipefitters and Sheet Metal Workers.

## 4. Relative skills

With respect to the Harrah's Casino jobsite and the Anheuser Busch jobsite, the record reflects that both employees represented by Pipefitters and employees represented by Sheet Metal Workers possess the necessary skills to perform the work in dispute. Accordingly, this factor does not favor an award of the work to either group of employees.

## 5. Economy and efficiency of operations

The record does not reflect that it would be more economical or efficient for either group of employees to perform the work at the Harrah's Casino jobsite or the Anheuser Busch jobsite. Accordingly, this factor does not favor an award of the work to either group of employees.

## 6. Joint Board determinations

Sheet Metal Workers contends that a 1995 determination of the NJAB, in which Grossman, the Employer, was found to have violated the Sheet Metal Workers' collective-bargaining agreement by not assigning double wall flue (metalbestos) installation to employees represented by Sheet Metal Workers, favors an award of the disputed work at the Anheuser Busch facility.

This 1995 award involved a dispute that predated the dispute in the instant case. Further, there is no evidence that Pipefitters had the opportunity to present evidence relating to the jurisdictional disputes at issue here at the NJAB proceeding. Therefore, we find that the 1995 NJAB award does not favor an award of the disputed

work at the Anheuser Busch facility to either group of employees.

#### 7. Interunion agreement

The record includes a 1956 agreement between the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry and the Sheet Metal Workers' International Association. The record also includes an April 5, 1966 addendum to the 1956 interunion agreement.

The 1956 interunion agreement states, in part, that

[t]he installation of completed and/or knock-down package type heating and cooling units consisting of fans, filters, refrigeration condensing units, and dampers, with heating coils and/or cooling coils assembled therein, whether or not in connection with a duct system shall be unloaded and installed by a composite crew consisting of an equal number of [employees represented by Sheet Metal Workers and employees represented by Pipefitters], with the understanding that the [employees represented by Sheet Metal Workers] shall install any duct work in connection with the unit and [employees represented by Pipefitters] shall install all piping in connection with the units.

The 1956 interunion agreement further states that

[w]here the booster coil is hung separately from the duct work, the installation of the booster coil is the work of [employees represented by Pipefitters]. Where the booster coil is inserted in the duct work, and not supported separately, the installation of the booster coil is the work of the Sheet Metal Workers the installation of free-standing coils, regardless of whether they are built within a sheet metal housing, is the work of [employees represented by Pipefitters].

The April 5, 1966 addendum to the 1956 interunion agreement states, in part, that, in the context of the installation of certain heating units, a "duct system is any air handling duct in connection with or attached thereto other than directional ells or nozzles."

The 1956 interunion agreement and the April 5, 1966 addendum to that agreement arguably support an award of the disputed work at either the Harrah's Casino jobsite or the Anheuser Busch jobsite to either group of employees. In addition, the record does not show that the Employer 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. Accordingly, we cannot find that this factor favors or disfavors the current assignment of the disputed work to employees represented by Pipefitters.

#### Conclusions

After considering all of the relevant factors, we conclude that the factors favor an award of the disputed work to the employees represented by Pipefitters consistent with the Employers' current assignments. As to

Case 14-CD-935, we conclude that the employees represented by Pipefitters are entitled to perform the disputed work at the Automated Data Processing facility and the Harrah's Casino project based on employer preference and past practice, and area and industry practice. We also conclude that the employees represented by Pipefitters are entitled to perform the piping containment system installation work and the test port installation work at the MEMC facility based on employer preference and past practice, and area and industry practice. We further conclude that employees represented by Pipefitters are entitled to perform the scrubber installation work at the MEMC facility based on employer preference and past practice, area and industry practice, and relative skills. In this regard, as discussed above, we conclude that Sheet Metal Workers did not unequivocally disclaim the work relating to the installation of scrubbers at the MEMC facility.

As to Case 14-CD-936, we conclude that the employees represented by Pipefitters are entitled to perform the disputed work based on employer preference and past practice, and area and industry practice.

As to Case 14-CD-937, we conclude that the employees represented by Pipefitters are entitled to perform the work at the Anheuser Busch site based on employer preference and past practice, and area and industry practice; and that employees represented by Pipefitters and Sheet Metal Workers are entitled, as part of a 50/50 composite crew, to perform the work at the Harrah's Casino site based on employer preference and past practice, and area and industry practice.

In making these determinations, we are awarding the work to the employees represented by Pipefitters, not to the Union or its members, and, with respect to the disputed work at the Harrah's Casino site in Case 14-CD-937, to employees represented by Pipefitter and Sheet Metal Workers, not to the Unions or their members.

#### Scope of the Awards

The Employer, citing *Pipefitters Local 562 (Systemaire, Inc.)*, 320 NLRB 124 (1995), requested that the Board issue a broad award with respect to the disputed work at the Anheuser Busch facility in order to avoid the necessity to return to the Board based on Sheet Metal Workers' repeated claims to work performed by employees represented by Pipefitters. Pipefitters, also citing *Pipefitters Local 562 (Systemaire)*, supra, requested the Board to issue a broad award with respect to all of the disputed work, but particularly the Anheuser Busch jobsite. Sheet Metal Workers asserts that if the work is awarded to employees represented by Pipefitters, the Board should issue a narrow award. Sheet Metal Workers asserts that a broad award to it is appropriate, based on what Sheet Metal Workers asserts is Pipefitters' proclivity to violate Section 8(b)(4)(D) in order to obtain work.

The Board customarily declines to grant an areawide award in cases in which the *charged* party represents the employees to whom the work is awarded and to whom the employer contemplates continuing to assign the work. See *Laborers Local 243 (A. Amorello & Sons)*, 314 NLRB 501, 503 (1994); *Laborers (Paul H. Schwendener, Inc.)*, 304 NLRB 623, 625–626 (1991). 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 Grossman Contracting Company represented by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 562, AFL–CIO are entitled to perform the following work at the MEMC facility in O’Fallon, Missouri: the installation of a piping containment system for separating piping and potential leaks of noxious fumes from the clean room; the attachment to installed duct work of clean rooms, of test ports for gauging temperature and humidity regulation compliance; and the installation of scrubbers to reactor systems for cleaning the air and contaminants produced by reactors.

2. Employees of Grossman Contracting Company represented by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 562, AFL–CIO are entitled to perform the installation of nonducted cooling units in the mainframe computer room at the Automated Data Processing facility in Sunset Hills, Missouri.

3. Employees of Grossman Contracting Company represented by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 562, AFL–CIO are entitled to perform the installation of vertical stack fan coil units in the gambling complex hotel at the Harrah’s Casino project in Maryland Heights, Missouri.

4. Employees of C & R Heating and Service Company, Inc. represented by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 562, AFL–CIO are entitled to perform the installation of a small, nonducted air-conditioning unit at the construction site of the Washington University School of Law in St. Louis County, Missouri.

5. Employees of Grossman Contracting Company represented by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 562, AFL–CIO and employees of Grossman Contracting Company represented by Sheet Metal Workers’ International Association, AFL–CIO, Local No. 36 are entitled to perform the installation of variable air volume boxes with attached hot water reheat booster coils in the gambling complex hotel and casino at the Harrah’s Casino project in Maryland Heights, Missouri, as part of a 50/50 composite crew.

6. Employees of Grossman Contracting Company represented by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 562, AFL–CIO are entitled to perform the installation of a metalbestos emergency exhaust flue at building #181 at the Anheuser Busch project in St. Louis, Missouri.