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**International Union of Operating Engineers, Local 139
and The Boldt Company and Teamsters General
Union Local 662.** Case 18–CD–352973

September 11, 2026

**DECISION AND ORDER QUASHING NOTICE OF
HEARING**

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

The charge in this Section 10(k) proceeding was filed on October 18, 2024, by the Boldt Company (the Employer, or Charging Party), alleging that International Union of Operating Engineers, Local 139 (Charged Party) violated Section 8(b)(4)(D) of the Act by threatening to engage in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Teamsters General Union Local 662 (Party In Interest). A hearing was held on December 3, 2024, before Hearing Officer Richard J. Neuman. Thereafter, the parties filed post-hearing briefs. Teamsters Local 662’s post-hearing brief included a motion to quash the Section 10(k) notice of hearing.

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

The Employer is a Wisconsin corporation with an office and place of business in Appleton, Wisconsin. During the past year, the Employer purchased and received goods and materials valued in excess of \$50,000 directly from entities located outside the State of Wisconsin. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that the International Union of Operating Engineers, Local 139 and Teamsters General Union Local 662 are labor organizations within the meaning of Section 2(5) of the Act.

¹ Engineers Local 139’s collective-bargaining agreement is with the Associated General Contractors of Wisconsin, Inc., of which the Employer is a member. The Employer is a direct signatory to the Teamsters’ collective-bargaining agreement. The disputed work is performed and paid under the wage rates in each agreement. Both agreements contain grievance procedures, and the Teamsters’ agreement contains a section referring to a procedure for resolving jurisdictional disputes.

² The Hearing Officer did not make a finding as to the number of Engineers performing the disputed work. The Employer and the Engin-

II. THE DISPUTE

A. Background

The Employer is a commercial construction “vertical contractor” with a facility on Ballard Road in Appleton, Wisconsin, where it stores materials and equipment for use at numerous jobsites. Historically it has hired employees represented by both Engineers Local 139 and Teamsters Local 662 to drive semi-trucks and dump/flat-beds and haul materials to and from the Ballard Road facility under collective-bargaining agreements between the Employer and each union.¹ All drivers are expected to possess a commercial driver’s license and to drive trucks and transport material, however only the Engineers are also qualified to load or unload equipment and to operate the equipment to perform work as needed.

For at least the last 10 years, it appears that the Employer has hired between 1–3 Teamsters and between 2–3 or more Engineers at any one time to deliver materials and equipment to and from the Ballard Road facility.² Regarding how trucking assignment decisions were made, Vice President of Labor Relations Rob Branyan explained, “the work’s been assigned based on capacity, need, but overall it’s who’s available.” In 2024, the last employee represented by the Teamsters retired.³ When the Teamsters’ business agent (Richard Dain) asked VP Branyan who would replace the retired employee, Branyan replied over email that he could not employ any more Teamsters due to a hiring freeze. The Teamsters then filed two grievances requesting the Employer to fill the Teamsters’ driving positions. When the Engineers learned of the Teamsters’ grievances, the Employer, through Branyan, told the Engineers’ district manager and recording secretary Shane Griesbach, that if it were to resolve the grievances by hiring Teamsters, it “may have to lay off an Operating Engineer to make room for a Teamster.” Griesbach responded over email that, “if Boldt ends up hiring Teamsters to replace our Operating Engineers, Local 139 will use all lawful means, up to and including picketing, to preserve this work for the Local 139 bargaining unit members.” The Employer then filed a charge against the Engineers alleging a violation of Section 8(b)(4)(D) of the Act, and the Region held a 10(k) hearing.

ers disagree on the number, with the Employer claiming that during the last 10 years it hired a total of 14 employees—11 Engineers and 3 Teamsters. The Engineers claim that between the fall of 2021 and December 2023 the Employer hired between 5–7 Engineers. It is unclear from the record precisely how many Engineers were employed at any given time during the previous 10 years.

³ Before that, one Teamster quit because he did not have the required commercial driver’s license, and another retired in 2015.

B. Work in Dispute

Each union stipulated to the work it was claiming but did not stipulate to a description of the work in dispute. We adopt the Hearing Officer's finding that the work in dispute is the overlap between each union's claimed work: the driving of semi-trucks and dump/flatbeds to and from the Ballard Road facility in Appleton, Wisconsin, and the hauling of materials.⁴

C. Contentions of the Parties

The Employer acknowledges that it has previously assigned both parties the disputed work. It asserts that it has more often used employees represented by the Engineers because the loads out of Ballard Road typically contain a mix of material and equipment, and only the Engineers can both haul and operate the equipment as needed, while the Teamsters can only haul material. The Employer claims to be caught between the Teamsters' grievances and the Engineers' picketing threat, and that the Teamsters have shown no evidence of a construction industry practice of assigning the disputed work to Teamsters. Teamsters Local 662 moves to quash the notice of hearing based on the existence of an alternative voluntary method of resolution and its allegation that the Employer colluded with the Engineers to dispense with the Teamsters' pending grievances. Both unions deny that this is a jurisdictional dispute and claim that instead this is a work preservation dispute that is not properly before the Board. The Engineers also claim that they did not engage in proscribed conduct. Alternatively, each union asserts that if the Board finds this to be a jurisdictional dispute, it is entitled to the disputed work.⁵

D. Applicability of the Statute

The Board may proceed to a determination of a dispute under Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires a finding that there is reasonable cause to believe that there are competing claims to the disputed work and that a party has used proscribed means to enforce its claim to the work in dispute. Additionally, there must be a finding that the parties have not agreed on

a method for the voluntary adjustment of the dispute. See, e.g., *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005).

As to the first threshold requirement, the parties stipulate that the Engineers and the Teamsters both claim the disputed work. As to the second requirement that the charged party has used proscribed means, the Engineers deny violating Section 8(b)(4)(D) because District Manager Griesbach's message threatening to picket the Employer was "only in response to if Boldt chose to remove that work," and Griesbach testified that in emailing his message to the Employer through VP Branyan, "[m]y intention was to protect our workforce and protect our operators from being laid off." Although the Teamsters suggest that there could have been collusion between the Engineers and the Employer, they admit to the absence of evidence showing collusion. We find that there was no reason for the Employer to discount the seriousness of the Engineers' threat, especially as the Employer had experienced strike activity by the Engineers in another geographic area, under a different collective-bargaining agreement.⁶

Even though some threshold requirements for finding a Section 10(k) dispute may superficially appear to have been met, we also look to the "real nature and origin of the dispute" in determining whether a jurisdictional dispute exists. *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818, 820 (1986), aff'd. 827 F.2d 581 (9th Cir. 1987). We find that the real nature of this dispute is one of work preservation, which is a complete defense against Section 8(b)(4)(D) allegations, and such a dispute "is not within the intended scope of Section 10(k) of the Act." *Seafarers (Recon Refractory & Construction)*, 339 NLRB 825, 827 (2003), review denied 424 F.3d 980 (9th Cir. 2005). Although both unions claim the disputed work, the record establishes that each has historically performed the work. As we have found in many cases, "if a dispute is fundamentally over the preservation, for one group of employees, of work they have historically performed, it is not a jurisdictional dispute." *Machinists District 190 Local 1414 (SSA Terminal, LLC)*, 344 NLRB 1018, 1020 (2005),

⁴ Only the Engineers claim the hauling of both materials and equipment to and from the Ballard Road facility. The parties stipulate that both unions claim the work they have historically performed.

⁵ To support their requests to be assigned the disputed work, the Engineers rely on the factors of employer preference, relative skills and training, area and industry practice, and economy and efficiency of operations, while the Teamsters rely on the seldom-invoked factor of job loss because they would lose their entire bargaining unit if the disputed work is awarded to the Engineers.

⁶ Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. See *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB at 1139. Although it is

unnecessary to reach this issue given the conclusion we reach below, we find no evidence of an agreed-upon method of voluntary adjustment that binds all parties. See *Carpenters Pacific Northwest Regional Council (Brand Energy Services)*, 355 NLRB 274, 276, 279 (2010). After careful scrutiny of the "2024 Construction Site Jurisdictional Agreement between International Union of Operating Engineers and International Brotherhood of Teamsters," which the Teamsters assert would preclude the Board from hearing this case, we do not find the Employer bound to that process through other agreements or relationships, nor do the Teamsters explain its relationship, if any, to Article 7 (entitled "Jurisdictional Disputes") of its collective-bargaining agreement. See *Laborers Local 1184 (High Light Electric)*, 355 NLRB 167, 169 (2010).

affd. 253 F.App'x 625 (9th Cir. 2007) (unpublished decision).

In this case, we find that the Employer's long-standing practice was to assign the disputed work to employees represented by both unions, under their respective collective-bargaining agreements. While both unions stipulate to claiming the disputed work, each was merely claiming work that they had historically performed. Indeed, both the Engineers and the Teamsters characterize the dispute as one of work preservation. Unlike cases that we have classified as jurisdictional disputes in which one of two groups of employees claimed *all* of the work historically performed by both groups, or sought to acquire work that it had not performed in the past,⁷ the Engineers, as urged in its brief, are "not seeking to expand its work," but "simply to keep the work that is currently being performed by its members." Cf. *Carpenters (Prate Installations, Inc.)*, 341 NLRB 543, 545 (2004). At the same time, this dispute also concerns the Teamsters' "attempt merely to preserve the work it previously had performed." *Seafarers (Recon)*, 339 NLRB at 827. The Board has found that "a dispute does not lose its character as a work preservation dispute simply because more than one union may have a work preservation claim to the same work." *Machinists District 190 Local Lodge 1414 (SSA Terminal)*, 344 NLRB at 1020. Just like the bricklayers in *Seafarers (Recon)*, 339 NLRB at 827–828,⁸ the "real nature and origin of the dispute" was the Teamsters' effort to preserve the bargaining unit work of driving and hauling material that it had consistently performed for ten or more years under its collective-bargaining agreement.

We also find that the Employer played a role in creating this dispute. As a general principle, "the Board will not afford the employer the use of a 10(k) proceeding to resolve a dispute of its own making." *Machinists District 190 Local 1414 (SSA Terminal)*, 344 NLRB at 1020 (finding dispute created by employer's breach of contract); see also *Operating Engineers, Local 14-14B (Tishman Construction Corp.)*, 372 NLRB No. 65, slip op. at 4 (2023) ("10(k) relief is not available to an employer who foments a dispute by transferring work away from a group claiming it."). Although the Employer here did not intentionally remove the Teamsters' work or reassign it to employees who had not performed it in the past, it allowed the small

number of Teamsters-represented employees to reach zero through attrition without replacing the final retiree as requested. Thus, it departed from its past practice of using both Teamsters and Engineers for driving and hauling work at the Ballard Road facility, and justified its actions with its hiring freeze, which served its preference for hiring Engineers who could both transport and operate equipment. To that end, the Employer instigated the dispute by soliciting the Engineers' opinion in response to the Teamsters' grievance, like the employer in *Seafarers (Recon)*, 339 NLRB at 828, and stating that it would have to lay off Engineers if it hired another Teamster. This explanation is at odds with the fluctuating number of employees assigned from each union over the years and VP Branyan's testimony that "the work's been assigned based on capacity, need, but overall it's who's available." Branyan also told Business Agent Dain during negotiations for the Teamsters' collective-bargaining agreement that the Employer intended to retain two Teamsters for the duration of the agreement, but that its yard manager preferred to use Engineers.

Whether the Employer was required to replace the final retired Teamster is a contractual issue between the Employer and the Teamsters that was appropriately submitted to the grievance procedure. See, e.g., *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB at 822–823. We conclude that the evidence fails to establish a traditional jurisdictional dispute in which an innocent employer, caught in the middle of two rival unions, is willing to assign the work to either group if the other will just let him alone. See also *Teamsters Local 107 (Safeway Stores)*, 134 NLRB 1320, 1323 (1961) ("Certainly it was not intended that every time an employer elected to reallocate work among his employees or supplant one group of employees with another, a 'jurisdictional dispute' exists[.]"). As such, we find that this work preservation dispute is not appropriate for resolution under Section 10(k).⁹

ORDER

It is ordered that the notice of hearing issued in this case is quashed.

Dated, Washington, D.C. September 11, 2026

⁷ See, e.g., *Laborers Local 860 (Ronyak Paving, Inc.)*, 360 NLRB 236, 239 (2014); *Teamsters Local 174 (Airborne Express)*, 340 NLRB 137, 139 (2003) ("[T]he Board has not applied the work preservation doctrine . . . where the union's objective was acquisition of work not historically performed by the claiming group of employees.").

⁸ In *Seafarers (Recon)*, 339 NLRB at 827–828, the employer had collective-bargaining agreements with both the bricklayers and the laborers, but to fulfill a customer's wish to cut costs, assigned work to the laborers who had previously performed only supporting tasks. The

Board found that the "real nature and origin of the dispute" was the bricklayers' attempt to preserve its bargaining unit work, and not the laborers' threat to picket if the employer reassigned the work back to the bricklayers.

⁹ Since we grant the motion to quash based on the lack of a cognizable jurisdictional dispute, we find it unnecessary to pass on Local 139's argument that it did not engage in proscribed conduct. For the same reason, we do not make an award of work pursuant to Sec. 10(k) of the Act.

James R. Murphy,	Chairman
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David M. Prouty,	Member
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Scott A. Mayer,	Member
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