Local 7, Empire State Regional Council of Carpenters, UBC *and* Five Brothers, Inc. and Local 46, Metallic Lathers Union and Reinforcing Ironworkers of New York City and Vicinity. Case 29–CD–575

June 28, 2005

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The charge in this Section 10(k) proceeding was filed on February 9, 2005, by Five Brothers, Inc. (the Employer). It alleges that the Respondent, Local 7, Empire State Regional Council of Carpenters, UBC (the Carpenters) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Local 46, Metallic Lathers Union and Reinforcing Ironworkers of New York City and Vicinity (the Lathers or Local 46). A hearing was held on April 7, 2005, before Hearing Officer Peter Pepper. Thereafter, the Employer, the Carpenters, and the Lathers filed briefs in support of their positions.

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 parties stipulated that the Employer is a Delaware corporation engaged in the business of commercial building fabrication and integrated systems, and that it sells goods and services valued in excess of $50,000 from its facility located at 5021 Industrial Road, Farmingdale, New Jersey 07727, to customers located outside the State of New Jersey. Accordingly, on the basis of the parties' stipulation, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties also stipulated, and we find, that the Carpenters and the Lathers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

This dispute involves the installation of wire mesh on the Q-deck[1] in preparation for the spraying of fireproofing in connection with the construction of a Stop and Shop supermarket at Sills and Station Roads in Medford, New York.

The Employer is engaged in commercial carpentry work involving framing and sheetrocking walls and installing ceilings, and the Employer employs employees represented by the Carpenters to perform that work. The Employer is not engaged in installing fireproofing. In October 2004, the Employer contracted with J. Petrocelli Contracting, a general contractor, to perform work in connection with the construction of a Stop and Shop supermarket in Medford, New York. The work involved framing and sheetrocking the walls and installing acoustical ceilings and standing C roofs. In late December 2004 or early January 2005, while still in the course of construction, Petrocelli requested that the Employer install wire mesh on the bottom of the Q-deck in preparation for fireproofing that the Town of Medford required.[2] Although this work was not originally included in the contract between the Employer and Petrocelli, the work was required because the decking had come in primed or painted, and there was a concern that the fireproofing material would not adhere to it. The wire mesh was to be installed in order to support the fireproofing material. The work involved using snips to cut the wire mesh, tape measures to measure it, and power screw drivers to attach the wire mesh to the Q-deck. The Employer anticipated that it would take 6 to 8 men 3 to 4 weeks to install the estimated 65,000 to 70,000 square feet of wire mesh. The Employer assigned the installation of the wire mesh to its employees represented by the Carpenters, who were already performing other work at the site.

In early January 2005, after the wire mesh installation had begun, Kevin Kelly, a business representative of the Lathers, visited the jobsite and told Geoffrey James, a Carpenters council representative, that he believed the Employer had violated the Lathers' collective-bargaining agreement by not assigning the wire mesh installation work to employees represented by the Lathers. Kelly also called Richard Avon, the Employer's vice president and principal, and stated that he was claiming that the wire mesh installation work was Lathers' work.[3] Avon informed Kelly that the Carpenters had claimed it was their work. Kelly subsequently called back and repeated

[1] The Q-deck, over which roofing materials are placed, is a metal deck that sits on top of steel bar joists. The bottom of the Q-deck is the underside of the roof.

[2] It was originally believed that the Town of Medford would not require the building to be fireproofed.

[3] Kelly also sent a fax, dated January 4, 2005, to Joe Oliveri of the Association of Wall-Ceiling and Carpentry Industries of New York, Inc. (the Association), of which the Employer is a member, claiming that the Employer's assignment of the wire mesh installation to Carpenters-represented employees was a violation of the Lathers' collective-bargaining agreement, and requesting that a Trade Board meeting be convened as soon as possible. As a result of that request, a Trade Board proceeding was held on January 14, 2005. The Trade Board deadlocked on the contract violation issue, and an arbitration hearing between the Employer and the Lathers was scheduled for June 21, 2005. The Carpenters is not a party to that arbitration.

his claim, stating that the Employer "was signed with him." Avon told Kelly that he was also "signed with" the Carpenters. Avon also spoke with William Weitzman, regional director of the Carpenters, and told him that the Lathers was "laying claim to the work." In response, Weitzman stated, "no, it's carpenters' work." When Avon suggested a discussion between the two unions, Weitzman replied that there was "no talking, it was carpenters' work." Weitzman also informed Avon that if Avon "took the carpenters off the wire mesh, that he would take the carpenters off the rest of the job." Irwin Popkin, counsel to the Association, testified that Weitzman told him that "any attempt to remove him would result in . . . a sit down on the job."[4] Based on these alleged threats, the Employer filed the unfair labor practice charge against the Carpenters.

B. Work in Dispute

The notice of hearing states that the work in dispute is the installation of wire mesh on the Q-deck in preparation for the spraying of fireproofing in connection with the construction of a Stop and Shop at Sills and Station Roads in Medford, New York.[5]

C. Contentions of the Parties

The Employer argues that this dispute is properly before the Board for determination because there are competing claims to the work, there is reasonable cause to believe that the Carpenters violated Section 8(b)(4)(D) of the Act, and there is no agreed-upon method for the voluntary resolution of this dispute. It further argues that the disputed work should be awarded to employees represented by the Carpenters based on the Employer's current assignment of the work, employer preference, and economy and efficiency of operations. The Employer also contends that the employees represented by the Carpenters have the relevant skill and ability to perform the disputed work.

The Carpenters contends that there is no agreed-upon method for the voluntary resolution of the dispute and that the work was properly and appropriately assigned by the Employer to employees represented by the Carpenters who were already performing other work at the site. The Carpenters urges the Board to uphold the assignment based on the Employer's preference, practice, and current assignment, economy and efficiency of operations, area and industry practice, the collective-bargaining agreement with the Carpenters covering the work, and relative skills and training.

The Lathers contends that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated and that therefore the notice of hearing should be quashed. The Lathers further argues that if the Board determines that a 10(k) determination is warranted, the work should be awarded to employees represented by the Lathers based on its collective-bargaining agreement, area and industry practice, relative skills and training, and interunion agreements, jurisdictional agreements, and AFL–CIO decisions.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be established that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. This requires a finding that there is reasonable cause to believe that there are competing claims to disputed work between rival groups of employees and that a party has used proscribed means to enforce its claim. In addition, the Board must find that no method for voluntary adjustment of the dispute has been agreed upon. *Bricklayers (Cretex Construction Services)*, 343 NLRB No. 110 (2004).

Reasonable Cause to Believe that Section 8(b)(4)(D) has been Violated

Avon's testimony that both Kelly and Weitzman claimed the work for employees represented by their respective Unions is sufficient to establish that there are competing claims to the disputed work between rival groups of employees. Moreover, the assignment of the work to employees represented by the Carpenters establishes their claim to the work. *Laborers Local 662 (McCarthy Bros.)*, 268 NLRB 926, 927 (1984).

Avon's testimony that Weitzman stated that if Avon "took the carpenters off the wire mesh, that he would take the carpenters off the rest of the job" and Popkin's testimony that Weitzman said that "any attempt to remove him would result in . . . a sit down on the job" provide reasonable cause to believe that the Carpenters has used proscribed means to enforce its claim to the work. Although Weitzman refuted Popkin's testimony that he threatened a "sit down," this conflict does not prevent the Board from reaching the merits of the dispute. In a 10(k) proceeding, the Board is not charged with finding that a violation did, in fact, occur, but only that reasonable cause exists for finding such a violation. See *Bricklayers Local 15 (Fusco Corp.)*, 278 NLRB 967, 968 (1986) (Board not required to resolve conflicts in testimony to proceed under Sec. 10(k)). Contrary to the argument of the Lathers that Weitzman's alleged conduct "hardly

[4] Weitzman denied threatening a "sit down."

[5] At the hearing there was disagreement as to whether the work involved the installation of wire mesh or wire lath. In their briefs, however, the parties all refer to the disputed work as wire mesh, as set forth in the notice of hearing.

amounts to 'proscribed means' to enforce a claim to the work,"[6] testimony concerning a threat to take employees off of the job or to engage in a sit-down strike if the work assignment is changed is sufficient to establish reasonable cause to believe that Section 8(b)(4)(D) has been violated. *Plumbers Local 24 (E. L. & S. Contracting Co.)*, 231 NLRB 158, 159 (1977) (threat to "take his men off the job" establishes reasonable cause to believe Sec. 8(b)(4)(D) has been violated).

No Agreed-Upon Method for Voluntary Adjustment of the Dispute

Finally, we also find that there is no agreed-upon method for the voluntary adjustment of the dispute to which all parties are bound. At the hearing, counsel for the Lathers refused to stipulate that there was no agreed-upon method for the voluntary resolution of this dispute that would bind all the parties. However, in its brief, the Lathers now concedes that "there may have been . . . no voluntary means to adjust the dispute that would include all parties." (Lathers Br. p. 9.) There is no evidence establishing that the Carpenters is bound to any dispute resolution procedure of the AFL–CIO or its Building Trades Council. In addition, the Carpenters is not a member of the New York Plan for the resolution of jurisdictional disputes. Although an arbitration between the Employer and the Lathers is scheduled as a result of the deadlock at the Trade Board (supra fn. 3), the Carpenters is not bound to participate in the arbitration. Accordingly, there is no agreed-upon method for the voluntary resolution of this dispute that binds all the parties.

We therefore find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. Accordingly, we find that the dispute is properly before the Board for determination, and we deny the Lathers' request to quash the notice of hearing.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers 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 this dispute.

[6] Lathers Br. p. 9.

1. Certifications and collective-bargaining agreements

There is no evidence that either Union has been certified to represent employees who are performing the disputed work. However, the Association, of which the Employer is a member, has collective-bargaining agreements with both Unions that arguably cover the disputed work.

Article XX, Trade Autonomy (Jt. Exh. 2, p. 29) of the Carpenters' agreement with the Association covers the "installation of stran steel or similar material; cutting and hanging all lumber or other materials between girders and joists for fireproofing." Geoffrey James, a Carpenters council representative, testified that the wire mesh installed on the Q-deck in preparation for the spraying of fireproofing is affixed between the joists supporting the Q-deck.[7] Article III of the Lathers' collective-bargaining agreement with the Association covers "the laying and setting of iron and steel and mesh used in fireproof construction, on the cutting and bending of all iron and steel and metal and wire lath or mesh. . . ."[8] Because both contracts arguably cover the disputed work, this factor does not favor awarding the disputed work to employees represented by either Union.

2. Employer preference and assignment

The Employer prefers to assign, and has assigned, the disputed work to employees represented by the Carpenters. This factor favors awarding the disputed work to employees represented by the Carpenters.

3. Employer past practice

The Employer does not employ Lathers-represented employees. The Employer has always used Carpenters-represented employees to install wire mesh, albeit for purposes other than fireproofing.[9] The Employer's past practice with respect to work similar to the disputed work favors an award of the disputed work to Carpenters-represented employees.

[7] In addition, the Carpenters notes that art. XX also covers "fireproofing of beams and columns, fireproofing of chase, sound and thermal insulation materials, fixture attachments including all layout work, preparation of all openings for lighting, air vents or other purposes and all other necessary or related work in connection therewith" regardless of their material composition or method or manner of their installation, attachment, or connections. (Jt. Exh. 2, pp. 27–28.)

[8] Jt. Exh. 1, pp. 3–4. The Carpenters argues that although the Employer agreed to be bound by the Lathers' contract by virtue of its membership in the Association, the agreement would not be enforceable against the Employer because the Employer does not employ any employees covered by that agreement.

[9] Avon and Weitzman testified that the installation of wire mesh on a Q-deck to accept fireproofing is "out of the ordinary" and an "unusual application in the construction industry." Avon testified that he has seen it performed only once before in 18 years.

4. Industry practice

The Employer and the Carpenters argue that nationwide, including all areas in New York State outside the jurisdiction of Lathers Local 46, the industry practice since 1979 has been that the installation of wire mesh is performed by employees represented by unions affiliated with the United Brotherhood of Carpenters and Joiners of America (UBC). The record shows that prior to 1979, Local 46 and other Lathers locals were affiliated with the Wood, Wire and Metal Lathers' International Union. In 1979, all the local unions affiliated with the former Wood, Wire and Metal Lathers' International Union, other than Local 46, became affiliated with the UBC.[10] Therefore, since 1979, the installation of wire mesh, traditionally performed by employees represented by the Lathers locals formerly affiliated with the Wood, Wire and Metal Lathers' International Union, has been predominantly (with the exception of the counties within the jurisdiction of Local 46[11]) performed by employees represented by those same local unions now affiliated with the UBC.

In sum, the current industry practice appears to favor employees represented by the Carpenters. However, because this industry practice resulted from a change in affiliation at the International level, and not from traditional trade jurisdiction, we find that this factor does not support an award of the disputed work to employees represented by either Union.

5. Area practice

As set forth above, Local 46 did not affiliate with UBC and accordingly, it retained jurisdiction over installation of wire mesh in its geographical area where the disputed work is located. Robert Ledwith, business manager of Local 46, testified that over the last 25 years, contractors within Local 46's geographical jurisdiction have assigned the installation of wire lath or wire mesh to receive fireproofing to employees represented by Local 46. He testified that it is a trade practice in the area.

The Lathers also introduced a letter from the Building and Construction Trades Council of Greater New York dated April 5, 2005, and a letter from the Building and Construction Trades Council of Nassau and Suffolk Counties dated April 6, 2005, in which the presidents of those organizations stated that the installation of metal lath for plastering and hand-applied/spray-on fireproofing has always been the jurisdiction of employees represented by Local 46. Similarly, the Lathers introduced a series of letters from various employers stating that they have used employees represented by Local 46 to perform wire lath work. Several of the letters specifically state that Local 46-represented employees have been used to install wire lath for fireproofing.

The Employer and the Carpenters objected to the admission of these letters on the ground that they were unsupported, conclusory, unsworn hearsay by individuals who were not shown to be unavailable to testify. They urge the Board to reject the letters. In response, the Lathers submits that the letters are admissible to show area practice, relying on *Ironworkers Local 380 (Stobeck Masonry)*, 267 NLRB 284, 286 (1983).

"Courts have long recognized that hearsay evidence is admissible before administrative agencies, if rationally probative in force and if corroborated by something more than the slightest amount of other evidence." *RJR Communications, Inc*., 248 NLRB 920, 921 (1980). In *Stobeck*, supra, in which contractor letters were admitted as evidence of area practice, the Board also relied on testimony from other contractors that corroborated the written statements. *Stobeck*, supra at 286. Here, the assertions in the letters concerning area practice were corroborated by the testimony of Ledwith, who stated that this type of work has been performed by Lathers-represented employees within the geographical jurisdiction of Local 46 for the past 25 years and that it is a trade practice in the area. Accordingly, we find that the letters from the Building and Trades Council presidents and the contractors that do business within the geographic jurisdiction of Local 46 constitute admissible evidence of area practice.

We also find that the Lathers' evidence of area practice was not effectively contradicted by any evidence presented by the Carpenters. Accordingly, we conclude that the factor of area practice favors awarding the disputed work to employees represented by the Lathers.

6. Relative skills and training

The disputed work involves measuring, cutting, and screwing the mesh into place. The record shows that employees represented by both Unions have the necessary skills and training to perform the disputed work. Accordingly, this factor does not favor awarding the disputed work to employees represented by either Union.

7. Economy and efficiency of operations

The Employer presented evidence that assignment of the disputed work to employees represented by the Carpenters is more efficient because they are already on the site doing other work. The general contractor needed the disputed work done expeditiously, and the Employer determined that using employees already on the site would be more efficient. Although the Lathers presented

[10] Local 46 became affiliated with the International Association of Bridge, Structural and Ornamental Iron Workers.

[11] This includes southern Rockland, Westchester, Nassau, and Suffolk counties, and the five boroughs of New York City.

testimony that there were employees represented by the Lathers working at the site for another subcontractor, those employees were not employed by the Employer. Because the Carpenters-represented employees were already on the site and available to perform other work for the Employer in addition to the disputed work, we find that this factor supports awarding the disputed work to employees represented by the Carpenters. See, e.g., *Laborers (Eshbach Brothers, LP)*, 344 NLRB No. 4, slip op. at 4 (2005) ("because the Laborers are performing other work on the project, aside from the disputed work, the factor of economy and efficiency of operations favors an award to those employees").[12]

8. Interunion agreements and awards

The Lathers presented documents purporting to show the existence of interunion agreements addressing the assignment of the disputed work. Specifically, the Lathers introduced a letter dated April 13, 1979, from UBC President William Sidell, in which the Carpenters recognized the independent status of Local 46 and agreed that Local 46 would become affiliated with the International Association of Bridge, Structural and Ornamental Iron Workers. In that letter it was agreed that Local 46 "shall retain and keep its full geographical and trade jurisdiction. . . . Said trade jurisdiction shall include work traditionally performed by members of Local Union 46." This was reiterated in another letter dated May 4, 1979, in which it was stated that "[t]raditional trade jurisdiction which includes decisions of the New York Plan, the National Hearings Panel Award on ceiling systems, and any decision pertaining to veneer ceiling systems rendered shall be performed by Lathers." In a letter dated February 18, 1981 from UBC President Konyha, the Carpenters again stated that it recognized Local 46's jurisdiction as described by Sidell's 1979 letters. The 1981 letter refers to "work in connection with concrete construction that it has traditionally had, work awarded to Lathers by decisions of the New York Plan, the National Hearings Panel Award on Ceiling Systems and the installation of traditional wire lath and rock lath and gypsum lath to receive plaster in accordance with the above." The Lathers also presented letters from Carpenters President Lucassen dated February 4, 1994, and April 24, 1995, reiterating that all jurisdictional agreements concerning Local 46 would be honored.

None of the letters introduced by the Lathers specifically refers to the installation of wire mesh to receive fireproofing on a Q-deck, which, according to record testimony, is work out of the ordinary in the construction industry. Accordingly, we find that these letters are insufficient to show that the Unions involved agreed that Local 46 had jurisdiction over the particular work involved in this dispute.

The Lathers also introduced a Hearings Panel decision on the Installation of Ceiling Systems dated August 24, 1966 and a subsequent corresponding "Green Book"[13] decision dated January 15, 1968, concerning "jurisdictional disputes of work assignments in controversy between lathers and carpenters involved in the installation of ceiling systems."[14] The Employer and the Carpenters argue that this decision is not applicable to the work in dispute because a Q-deck is not a ceiling system addressed by the decision.[15] We find that the Hearings Panel decision does not specifically refer to the work in dispute, and the evidence is insufficient to establish whether the disputed work falls within paragraph 3 of that decision as contended by the Lathers. Accordingly, we cannot find that the Hearings Panel decision favors an award of the disputed work to employees represented by either Union.

The Lathers introduced a copy of the "Green Book" dated June 1984, and Local 46 representative Ledwith testified that he believed that the agreements and decisions set forth on pages 40, 41, 45, 46, 99, 114, and 171 of that book were applicable to the work in dispute.[16]

[12] The Employer and the Carpenters also argue that it is more economical to use Carpenters-represented employees to perform the disputed work because the hourly labor costs for Lathers-represented employees are higher than for Carpenters-represented employees. The Board does not, however, consider wage differentials as a basis for awarding disputed work. *Automotive Trades District Lodge 190 (Sea-Land Service)*, 322 NLRB 830, 835 (1997), citing *Longshoremen ILA Local 1242 (Rail Distribution Center)*, 310 NLRB 1, 5 fn. 4 (1993). Therefore, we do not rely on wage differentials in finding that this factor favors awarding the disputed work to employees represented by the Carpenters.

[13] The "Green Book" refers to the "Plan for the Settlement of Jurisdictional Disputes in the Construction Industry" dated June 1984.

[14] Par. 2 states that the "installation of gypsum wallboard and other types of panels fastened directly to ceiling joists shall be performed by carpenters." Par. 3 states that the "installation of light iron work in ceiling systems with gypsum, Portland cement, acoustical or other plasters sprayed-on or trowel-applied over lath or directly to structural members shall be performed by lathers." Par. 4 relates to "Direct Hung Suspension Systems; Attached Concealed System without Backing Board; Furring Bar Attached System; Furring Bar Suspension System, Indirect Hung Suspension System or similar systems." At the hearing, the Lathers argued that par. 3 applies to the disputed work.

[15] Carpenters representative James testified that the Q-deck is not part of the ceiling, but rather is the underside of the roof. Lathers representative Ledwith testified that the Q-deck is not a ceiling, but is a sub-ceiling, which he defined as a "ceiling above the finished ceiling."

[16] Pages 40 and 41 set forth a 1926 agreement between the Lathers and the Sheet Metal Workers relating to the "installation of products manufactured by the Knapp Brothers' Manufacturing Company of Chicago Ill., and similar products." Ledwith testified that p. 41 refers to metal nose beads and metal corner beads, which are "appurtenances to wire lath, or mesh."

None of those agreements or decisions, however, specifically refers to the installation of wire mesh for fireproofing on a Q-deck, and their applicability to the awarding of the disputed work is inconclusive.[17] Therefore, we are unable to rely on them in awarding the disputed work.

Page 45 is a 1903 agreement between UBC and the Wood, Wire and Metal Lathers' International Union in which UBC agrees "not to assert jurisdiction over any iron work including iron or wire lathing, studding, or any other exclusively iron work claimed by the Wood, Wire and Metal Lathers' International Union."

Page 46 is a 1928 agreement between UBC and the Wood, Wire and Metal Lathers' International Union that Celotex Lath comes under the jurisdiction of the Wood, Wire and Metal Lathers' International Union.

Page 99 is a 1954 agreement by the presidents of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, and the International Association of Bridge, Structural and Ornamental Iron Workers that the term "Wire Mesh" in the 1953 agreement between those two unions "is not intended and does not apply to the erection of light iron furring or metal lath used to receive plaster."

Page 114 is a 1920 decision in a dispute between the International Union of Wood, Wire and Metal Lathers and the International Association of Bridge, Structural and Ornamental Iron Workers finding that the "erection and installation of all light iron work, such as light iron furring, brackets, clip, hangers, steel corner guards or beads, and metallic lathing of all descriptions belong solely to the Lathers." In 1912, Lathers was also awarded jurisdiction over Hy-rib lath. Ledwith testified that Hi-rib lath is the "same material that was used on this job site."

Page 171 is the January 15, 1968 Hearings Panel decision discussed above reaffirming the Hearings Panel decision of August 24, 1966, which had been stayed by court litigation.

[17] Some of them involve unions other than Carpenters and Lathers.

Accordingly, we conclude that this factor does not favor awarding the disputed work to employees represented by either the Carpenters or the Lathers.

Conclusion

After considering all of the relevant factors, we conclude that employees represented by the Carpenters are entitled to perform the work in dispute. Although the factor of area practice favors awarding the disputed work to Lathers-represented employees, we find that that factor is outweighed by the factors of Employer's preference, past practice, and current assignment, and economy and efficiency of operations that favor awarding the disputed work to employees represented by the Carpenters. In making this determination, we are awarding the work to employees represented by the Carpenters, not to that Union or its members. This determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

Employees of Five Brothers, Inc., represented by Local 7, Empire State Regional Council of Carpenters, UBC, are entitled to perform the installation of wire mesh on the Q-deck in preparation for the spraying of fireproofing in connection with the construction of a Stop and Shop at Sills and Station Roads in Medford, New York.