

Stephen Chamberlain

From: Stephen Chamberlain
Sent: Wednesday, February 10, 2016 12:56 PM
To: 'Averett, Jay'
Subject: Local 236 Grievance

Jay,

Just wanted to let you know that the Local has decided not to pursue their grievance based on their failure to file in a timely manner.

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INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Grievance Form and Record of Proceedings

L. U. 236

Co. Roth & Rau Outner

Grievance No. 1

NAME IBEW 236 DATE 12/4/15 TIME 1:15 A.M. PM
EMPLOYEE I.D. No. _____ DEPT. _____

STATE GRIEVANCE: Roth & Rau Laid off 12 Union Electricians They Hired 12
Area Union Electricians to replace them they did not use Local 236
Union Hall as per PHA and Working Agreement. They are signed to our

SETTLEMENT REQUESTED: All Back pay and Benefits for 12 IBEW Laid off.
Section 2.11

SIGNED IBEW 236
AGGRIEVED EMPLOYEE

SIGNED Ma. J. Jaramase
UNION REPRESENTATIVE

COMPANY'S REPLY TO GRIEVANCE: _____

IS DECISION SATISFACTORY? YES _____ NO _____
SIGNED _____ COMPANY REPRESENTATIVE DATE _____
HAS CASE BEEN APPEALED? YES _____ NO _____
SIGNED _____ UNION REPRESENTATIVE DATE _____

UNION'S REPLY: _____

SIGNED _____ UNION REPRESENTATIVE DATE _____
COMPANY'S REPLY: _____

IS DECISION SATISFACTORY? YES _____ NO _____
SIGNED _____ COMPANY REPRESENTATIVE DATE _____
HAS CASE BEEN APPEALED? YES _____ NO _____
SIGNED _____ UNION REPRESENTATIVE DATE _____

UNION'S REPLY: _____

SIGNED _____ UNION REPRESENTATIVE DATE _____
COMPANY'S REPLY: _____

IS DECISION SATISFACTORY? YES _____ NO _____
SIGNED _____ COMPANY REPRESENTATIVE DATE _____
SIGNED _____ UNION REPRESENTATIVE DATE _____

CASE APPEALED BY: UNION _____ DATE _____
COMPANY _____ DATE _____

(IF SPACE IN ANY STEP IS INADEQUATE, ATTACH SEPARATE SHEETS)

Greater Capital Region

BUILDING AND CONSTRUCTION TRADES COUNCIL, ALBANY, NEW YORK AND VICINITY

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November 30, 2015

Mark Lajeunesse
IBEW LU # 236
300 Troy-Schenectady Rd
Schenectady NY 12309

RE: Roth & Rau Grievance / Out of Ratio Manpower

Dear Sir and Brother:

Several months ago a grievance was filed on behalf of IBEW #236 members against Roth & Rau- Ortner a company currently doing on-site at the GLOBALFOUNDRIES site. The grievance alleges that Roth & Rau-Ortner is not in compliance with the terms of the PLA as it has not followed the hiring hall provisions contained within.

A thorough investigation has been completed and there are several factors that need to be considered;

- 1) Under the Tooling PLA entered into on March 9, 2011, Article III, Section 2c the company has the right to employ up to 17% of employees with special skills, etc and further has the right to select employees to be hired or laid off, in this case Roth & Rau has not kept in the proper ratio and has claimed its management rights
- 2) Article IV Management Rights; Regardless of this clause nothing contained in the PLA could be construed to alleviate the company from the hiring hall provisions above
- 3) While Roth & Rau live under the "Term and Conditions" of the PLA there is no evidence that it has ever signed a "Letter of Assent"
- 4) In absence of such "Letter of Assent" the company should not be allowed the cost savings from such PLA

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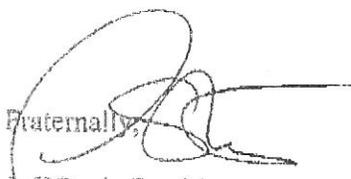
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- 5) Factually, Roth & Rau-Ortner is signatory to a full IBEW # 236 CBA and there is no evidence of any other documentation altering that CBA
- 6) Therefore the matter of ratio and hiring practices would best be served by the grievance process in the Electrician's CBA and further no saving should apply from the PLA

Fraternally,



Jeff Stark, President
GCRB&CTC

Basis of Grievance:

IBEW Local 236 (Local) alleges that Roth and Rau-Ortner (Ortner) terminated 12 union electricians, which were referred by the Local and replaced them with non-union electricians. The Local further alleges Ortner did not hire the electricians through the hiring hall in violation of the 2011 Project Labor Agreement (PLA) covering tooling at Global Foundries' Fab 8 Facility in Malta, New York (Global) and Article II, Section 2.11 of the Inside Agreement regarding union recognition and jurisdiction over work.

Background:

The work at Global performed by Ortner was a multi-phase project involving the installation of a material handling system inside the clean rooms at Fab 8, they must be completely contamination-free, but are also highly automated.

Ortner was a certified installer for Murata Machinery (Murata), the manufacturer of the automated material handling system of which the installation is the subject of the grievance, and was subcontracted by Murata to perform the installation and maintenance of the system.

Ortner, as a signatory to the Local's Inside Agreement properly hired electricians referred by the Local for the initial phase of the project which fell within the scope of the Inside Agreement. At the completion of the initial phase of the project, there was no longer a need for all of the electricians and all but two of the electricians working on the initial phase of the project were laid off. The two remaining electricians were used on the second phase of the project to wire power panels for the automated handling system, as Ortner had determined the work fell within the scope of the Inside Agreement.

Work immediately began on the next phase of the project which included the installation of controls and status monitoring devices for product movement throughout the semiconductor manufacturing process; including installation of sensors, and programming and debugging of the automation systems. This process required workers with training and experience that would have required travel to Global Foundries' facility in Dresden, Germany and further skills certification at Murata's headquarters in Kyoto, Japan and is work that falls outside of the scope of the Inside Agreement.

Even though the work was highly specialized, Ortner had attempted in the past to use members of the Local to perform the work, however, the specialized skills and certifications needed to meet the requirements of the customers Global Foundries and Murata Machinery were not met within the Local.

With the expectation that there would be ongoing work at Global Foundries related to the installation and maintenance of the automated handling systems and the amount of specialized training and certification required to meet the needs of the customer, Ortner determined that given the investment in training and certification necessary for workers installing and maintaining the Murata Machinery systems, workers trained and certified would become supervisory employees of Ortner. As such, as is common practice at Fab 8, Ortner contracted with Aerotek to recruit workers with the specialty skills required to complete the signaling phase of the project with the expectation that if workers referred were good candidates for employment as supervisors at Ortner additional training would be offered and the employees would be hired as members of the firm. The workers who continued to work on the signaling phase of the work were those initial six workers recruited by Aerotek and supervisors from Ortner who had the training and certification required by the customers. It should be noted that by the end of the first week of the signaling phase only two workers provided by Aerotek remained on the job, by the end of the second week the work had been directed to be stopped by Global Foundries along with the general shut down that occurred at Fab 8.

Contractor's Contention:

- **The grievance was improperly filed and not timely.**

The grievance was initially filed under the PLA. Following an investigation by Jeff Stark, President of the Greater Capital Region Building and Construction Trades Council (the union administrator of the PLA) it was found that there was "...no evidence that it [Ortner] has ever signed a "Letter of Assent"" and indicated that the "matter of ratio and hiring practices would be best served by the grievance process in the Electrician's CBA [Inside Agreement]..." essentially stating that the PLA did not apply and to follow the grievance process in the Inside Agreement.

Upon the determination by the Greater Capital Region Building and Construction Trades Council that the PLA did not apply in this instance the Local then filed the grievance under the Inside Agreement approximately five months after the work that is the subject of the grievance ended.

As a party to the PLA it is the responsibility of the Local to be knowledgeable of the terms of the agreement, specifically that there was an exclusion from the scope of the work in the agreement for the type of work that is the subject of the grievance (Article II, Section 5, (a)) which is capped at 7 percent of the total project; and a further exclusion for "all entities contracted by the owner" (Article II, Section 6, (j)); Global Foundries contracted directly with Murata Machinery who used Ortner as one of their certified installers.

Neither the project manager nor the Albany Electrical Contractors Association received written notice of the grievance under the PLA. Had the Local also filed the grievance under the Inside Agreement concurrently with the PLA, the Local would have preserved their right to the grievance process under the Inside Agreement. As it stands, the Local failed to meet the filing requirement established in Article I Section 1.10 of the Inside Agreement which states: "Any grievance not brought to the attention of responsible opposite parties within ten (10) days of its occurrence shall be deemed to no longer exist."

Additionally, it should be noted that in the Local's Grievance Form and Record of Proceedings, the Local does not identify the specific date of the alleged violation.

- **The work which is the subject of the grievance is outside of the scope of the Inside Agreement.**

The work performed in the second phase of the project included the installation of controls and status monitoring devices for product movement throughout the semiconductor manufacturing process; including installation of sensors, and programming and debugging of the systems. This work is not within the scope of work in the inside

It should be noted that the work performed that is subject of the grievance is specifically excluded from the scope of the PLA. It should also be noted that even under the current national IBEW-NECA Voice-Data-Video Agreement (Scope, II, B) specifically excludes from its scope the type of work that is the subject of this grievance.

- **A good faith effort was made by to employ members of Local 236.**

Under the PLA Murata was directly contracted by Global Foundries, the owner to provide and install the handling system. Under the terms of the PLA, Article II, Section 6 (j) which states: *"The following persons are not subject to the provisions of this Agreement, even though performing work on the Project: ... j) All entities directly contracted by the Owner"*

Murata was not obligated to use unionized workers for the installation of the automation management handling system, and by extension neither was Ortner. Ortner had no obligation to become a signatory to the Inside Agreement yet chose to in order to maintain a harmonious relationship with union workers at the Fab 8 facility.

Ortner followed the Inside Agreement as it applied to the different phases of the project and even sought to use Local 236 electricians when they were not required to do so under the scope of the Inside Agreement. Only when Ortner could not obtain workers with the required skills and certifications from Local referrals did they use the recruiter Aerotek to recruit long-term workers with the expectation to train and certify workers who would meet the requirements of Murata and would be hired permanently as managers and supervisors for Ortner.

Conclusion

Based on the background and information provided, the scope of work was outside of the scope of the Inside Agreement.

Furthermore, the grievance was improperly filed by the Local which has a responsibility to be knowledgeable of the agreements to which it is a signatory. As a result of the local's improper filing the time frame for filing a grievance clearly lapsed.

Based upon the information provided, the Labor Management Committee should dismiss this grievance with prejudice.