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CASE NO. 28-CD-272

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UNITED STATES OF AMERICA  
BEFORE THE  
**NATIONAL LABOR RELATIONS BOARD**

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In the Matter of:

SOUTHWEST REGIONAL COUNCIL OF  
CARPENTERS AND ITS AFFILIATED  
LOCAL UNION 1780, AFFILIATED WITH  
THE UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA,

-and-

IMAGE EXHIBIT SERVICES, INC.,

-and-

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,  
AND HELPERS, LOCAL NO. 631, AFFILIATED  
WITH THE INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS.

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**SUPPLEMENTAL BRIEF ON WORK PRESERVATION DOCTRINE BY  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL  
NO. 631, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS**

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## STATEMENT OF THE ISSUE PRESENTED

Whether this case fundamentally involves a contractual work preservation dispute, rather than a jurisdictional dispute within the meaning of Sections 8(b)(4)(D) and 10(k) of the NLRA, because even if a technical jurisdictional dispute exists, it was the result of the employer's own actions.

## STATEMENT OF THE CASE

This case is before the Board upon a Unfair Labor Practice Charge filed by Image Exhibit Services alleging a Section 8(b)(4)(D) of the NLRA, 29 U.S.C. § 158(b)(4)(D), work jurisdictional dispute between Teamsters, Chauffeurs, Warehousemen and Helpers, Local 631, Affiliated with the International Brotherhood of Teamsters (Teamsters or Local 631) and the Southwest Regional Council of Carpenters and Its Affiliated Local Union 1780, Affiliated with the United Brotherhood of Carpenters and Joiners of America (Carpenters), requesting resolution of a purported work jurisdictional dispute pursuant to Section 10(K) of the NLRA, 29 U.S.C. §160(k).

On December 2, 2008, The Board's Regional Director for Region 28 held a hearing under Section 10(k) of the NLRA, 29 U.S.C. § 160(k), concerning the work in dispute. At the conclusion of the hearing, and under established procedure, the record of those hearings was transmitted directly to the Board for consideration and decision. 29 C.F.R. § 102.90: *See, generally, ITT v. Local 134, IBEW*, 419 U.S. 428 (1975).

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The Board found that the facts of this case may raise an issue of work preservation and issued an Order on May 13, 2009, requesting that the parties submit supplemental briefs stating their position on whether this case involves a jurisdictional dispute or a work preservation dispute.

After receiving extensions of time to file supplemental briefs in the case, the deadline for filing supplemental briefs was extended to July 10, 2009.

## STATEMENT OF FACTS

### A. Background and Introduction

The Board found, and there is no question, that the Teamsters have historically and traditionally performed nearly all, if not the entire amount, of the installation and dismantling of trade show exhibits work in the convention industry (I&D) in the Las Vegas metropolitan area from the inception of the convention industry in Las Vegas. Highlighting this history is the fact that the Teamsters maintain over 130 primary contracts for I&D work in the Las Vegas metropolitan area. (Tr. 175:11-15). On the other hand, the Carpenters perform only supplementary work that the Teamsters do not want or cannot perform and are not the historical I&D labor suppliers, as evidenced by the fact that the Carpenters have only 2 or 3 small primary contracts. (Tr. 186:3-20).

Before the 2001 Master Agreement, signatory I&D employers in the industry called the Teamsters Union hall with their labor needs, and the Teamsters would then dispatch members based on availability from certain eligibility lists. (Tr. 134:18-135:13). It was then the practice of the Teamsters (having primary contracts for I&D labor) to then

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notify the Carpenters if the Teamsters ran out of members. Carpenters would then be dispatched. The secondary Carpenters that were dispatched were paid pursuant to the *Teamsters* Master Agreement—including having contributions made to the Teamster benefit funds—which was the only convention industry contract then in existence for I&D work. (Tr. 135:7-136:20; 127:1-12). With the explosion of the convention industry in Las Vegas, a greater demand was placed on skilled I&D labor, which precipitated the Teamsters agreeing to the current provision in the 2001 Master Labor Agreement allowing employers, for the first time, to make *secondary* agreements with other union. (Tr. 143:7-144:3).

The new article 4(1)(D)(4) allowed employers to obtain employees from other unions and other sources for the first time, *but only* in the event that the Teamsters were unable to provide the requested labor. (Tr. 28:9-20; 184:14-22). Any individuals employed from another union would be paid pursuant to the terms of a *secondary* agreement with that union. Before this new Master Agreement in 2001, there was no such thing as a secondary agreement, and the only agreement was the Teamsters primary agreement. (Tr. 143:13-21). It is according to this framework that Image Exhibit Services and the Carpenters entered into a secondary agreement during the term of the 2004-2007 Master Agreement. (Tr. 120:9-17; Tr. 28:6-10).

#### B. Facts Developed at the Hearing

A complete recitation of the facts developed at the hearing will not be fully reproduced here since the facts were briefed at length in the post-hearing briefs of the parties. However, the only pertinent facts required are that Image Exhibit Services is

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bound to its long term collective bargaining agreement with Teamsters Local No. 631 through the terms and conditions of the 2007-2011 Master Labor Agreement via the Short Form Agreement signed by Image in 1997. Image has attempted to manufacture an argument that they assumed that they were no longer signatories to the Master Labor Agreement based upon the oral representations of an Assistant Business Agent Laura Simms because the Teamsters were upset by Image's continued failure to obtain a bond as required by the terms of the Agreement. (Tr. 38:1-20). This position lacks any semblance of credibility and finds no support in the previous practices of the parties, nor is this position in any way justified by the specific dealings in this instance. Despite this fact, Image then used this baseless position as the justification to reassign the Teamster work and enter into a primary agreement with the Carpenters on September 28, 2007.

Local 631 convention industry Business Agent Tim Koviak testified that he never indicated that the Teamsters did not consider Image to be a signatory to the Master Agreement merely because they continually failed to provide the required bond, and that no Business Agent, and especially no Assistant Business Agent, would have the authority to make such a representation. (Tr. 188:2-17). Furthermore, Teamsters Secretary-Treasurer King testified that no business agent has such authority, including assistant Simms, and that he has actually given instructions to all his people that no company is to be refused labor because the lacked a bond. (Tr. 146:4-147:7). King further testified that he has never given instructions to any person employed by the Teamsters to refuse to provide labor when an employer was not bonded. (Tr. 145:25-146:3). Image understood these facts, and their claim that the Teamsters repudiated the collective bargaining agreement with Image because of this bond issue is clearly pretextual. In fact, in

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November 2007, the Teamsters filed a grievance against Image over the bonding issue. (Tr. 81:7-13). This was an ongoing issue with Image, but one the Teamsters had worked with them on in the past, withdrawing a lawsuit filed over this very issue in 2006, whereby the Teamsters agreed to work with Image concerning their bonding problems. (Tr. 81:7-13). In any event, Image's repudiation of their contract with the Teamsters is clearly not the appropriate manner to deal with the issue.

Upon receiving Image's improper and untimely letter repudiating the contract on September 19, 2007, Teamsters Local No. 631 President Tom Blitzsch sent a certified letter to Image notifying them of the apparent and well-understood fact that no one at the Teamsters has verbal authority to release Image from their contract with the Teamsters. Accordingly, the Teamster Trust Fund filed suit against Image in the United States District Court on May 22, 2008.

C. Image is Bound to Primary Contracts with the Teamsters Only

Image is a company that sets up, services and dismantles trade show exhibits as shows and conventions (commonly known as I&D work) primarily in Las Vegas. In October 1997, Image signed a Short Form Collective Bargaining Agreement with Local 631 (Short Form Agreement) making it subject to the provisions of the Master Collective Bargaining Agreement (Master Agreement) signed by Local 631 and GES Expositions Services, Inc.

The Short Form Agreement contains only three (3) Articles, each of which is pertinent to the current dispute. Article 1 states that the Employer recognizes Local 631

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as the “sole and exclusive bargaining representative of all persons employed by the Employer who perform any work of the nature included in the craft jurisdiction of the Union.” Article II explicitly binds the Employer and the Union to the terms of the Master Agreement and further states that they remain bound to all modifications and renewals of the Master Agreement “unless this Agreement is terminated by written notice from the Employer to the Union strictly in accordance with Article III of this Agreement.....” Article III states that notice of termination must be written, mailed certified, return service requested, “not more than one hundred twenty (120) days nor less than ninety (90) days prior to the termination date of the [Master] Agreement then in effect.”

There is absolutely no dispute that the Employer did not, at any time, validly terminate the Agreement pursuant to Article III. In fact, at the hearing, Image Vice President Anthony McKeighan (McKeighan) testified that he sent a letter to the Union, but through his own error he sent it outside of the window. Even more importantly, McKeighan further testified that his intent in sending the letter was not to terminate the Agreement, but to negotiate with the Union regarding the bonding requirement contained in the Agreement, which Image was having trouble complying with due to their IRS issues. The September 28, 2007, Agreement Image signed with the Carpenters is of no force and effect because Image was bound to their Agreement with the Teamsters for “all persons employed by the Employer who perform any work of the nature included in the craft jurisdiction of the Union [including I&D work].”

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## SUMMARY OF ARGUMENT

Sections 8(b)(4)(D) and 10(k) of the NLRA, 29 U.S.C. § 158(b)(4)(D) and 160(k), establish Board procedures for protecting employers from becoming trapped between the competing claims of rival unions demanding the right to perform the same work. *NLRB v. Local 1212 IBEW(CBS)*, 364 U.S. 573, 581 (1961). Before invoking its statutory powers to assign disputed work, however, the Board must first determine whether the facts present a jurisdictional dispute. Thus, the Board's preliminary responsibility in Section 10(k) proceedings is to identify “the real nature and origin of the [parties'] dispute” in order to determine whether the dispute is appropriate for resolution under Sections 8(b)(4)(D) and 10(k). *Teamsters Local 578 (USCP-Wesco, Inc.)*, 280 N.L.R.B. 818, 820 (1986), *aff'd*, 827 F.2d 581 (9th Cir. 1987).

If read literally, Sections 8(b)(4)(D) and 10(k) would require the Board to make a work assignment award any time an employer reassigns particular work from one employee group to another, and one of those groups threatens economic action either to maintain the new arrangement or force the company to revert to the original assignment. However, the mere existence of a work dispute that impacts two or more competing employee groups does not necessarily mean that a jurisdictional dispute appropriately exists under Sections 8(b)(4)(D) and 10(k) of the NLRA.

*Accordingly, a jurisdictional dispute need not be found to exist where an employer's unilateral conduct has precipitated the dispute, by depriving one employee group of work it had traditionally performed pursuant to a collective bargaining agreement and reassigning the work to another employee group that previously had*

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*asserted no claim to the work.* In such instances, the Board, with court approval, recognizes that the matter is appropriately considered a contractual work preservation dispute between the employer and the employee group that had traditionally performed the work under a collective bargaining agreement until the employer decided to reassign it. *Teamsters Local 107 (Safeway Stores, Inc.)*, 134 N.L.R.B. 1320, 1323 (1961); *USCP-Wesco*, 827 F.2d at 585.

Here, there is no question that the Teamsters were the primary labor force for Las Vegas metropolitan area I&D work, that Image Exhibit Services was, and has historically been, a signatory to a collective bargaining agreement covering the disputed work, and that the Carpenters have never asserted a primary claim to the installation and dismantling of trade exhibits covered under the collective bargaining agreement. Image Exhibit Services' attempt to reassign work covered under the Teamsters collective bargaining agreement to the Carpenters by repudiating the contract in place with the Teamsters and then attempting to enter into a primary agreement with the Carpenters created the dispute before us. Thus, Image Exhibit Services created the dispute through unilateral action, by transferring work away from the only union that had a tradition of performing it pursuant to a collective bargaining agreement and assigning it to a union that until then had no claim to the work. This is a classic case of work preservation and not a true jurisdictional dispute, even if the technical elements of a jurisdictional dispute may be present.

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## ARGUMENT

**THE BOARD SHOULD CONCLUDE THAT THIS CASE INVOLVES A CONTRACTUAL WORK PRESERVATION DISPUTE, RATHER THAN A JURISDICTIONAL DISPUTE WITHIN THE MEANING OF SECTIONS 8(b)(4)(D) AND 10(k) OF THE NLRA, AND THEREFORE SHOULD QUASH NOTICE OF THE SECTION 10(k) HEARING**

I. Introduction and Applicable Principles

Sections 8(b)(4)(D) and 10(k) of the NLRA, 29 U.S.C. § 158(b)(4)(D) and 160(k), establish a special procedure for protecting employers from becoming “helpless victims” trapped between the competing claims of rival unions demanding the right to perform the same work. *NLRB v. Local 1212, IBEW (CBS)*, 364 U.S. 573,581 (1961); *See, National Woodwork Mfrs. Ass'n v. NLRB*, 386 U.S. 612, 619 (1967). Section 8(b)(4)(D) makes it an unfair labor practice for a labor organization “to threaten, coerce, or restrain any person” with the object of “forcing or requiring any employer to assign particular work” to one group of employees rather than to another group. 29 U.S.C. § 158(b)(4)(D). Whenever an unfair labor practice charge alleging a violation of Section 8(b)(4)(D) is filed with the Board, Section 10(k) directs the Board, in the absence of a voluntary settlement, “to hear and determine the dispute out of which [the alleged] unfair labor practice shall have arisen.” 29 U.S.C. § 160(k). If the Board determines that a *bona fide* jurisdictional dispute exists within Sections 8(b)(4)(D) and 10(k), it then determines which of the competing employee groups is entitled to perform the disputed

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work. *CBS*, 364 U.S. at 586; *Teamsters Local 107 (Safeway Stores, Inc.)*, 134 N.L.R.B. 1320, 1322 (1961).

Before invoking its power under Section 10(k) to assign disputed work, however, the Board must first determine whether the facts present a bona fide jurisdictional dispute. *ILWU, Local 62-B v. NLRB*, 781 F.2d 919, 926 (D.C. Cir. 1986); *Foley-Wisner & Becker v. NLRB*, 695 F.2d 424, 427 (9th Cir. 1982). Thus, the Board's preliminary responsibility in Section 10(k) proceedings is to identify “the real nature and origin of the [parties'] dispute” in order to determine whether the dispute is appropriate for resolution under Sections 8(b)(4)(D) and 10(k). *Teamsters Local 578 (USCP-Wesco, Inc.)*, 280 N.L.R.B. 818, 820 (1986), *aff'd*, 827 F.2d 581 (9th Cir. 1987); *See, ILWU, Local 62-B*, 781 F.2d at 925.

II. This Case Involves a Contractual Work Preservation Dispute, Not a Jurisdictional Dispute Under Sections 8(b)(4)(D) and 10(k)

If read literally, Sections 8(b)(4)(D) and 10(k) would require the Board to make a work assignment award any time an employer reassigns particular work from one employee group to another and one of those groups threatens economic action either to maintain the new arrangement or force the company to revert to the original assignment. However, the mere existence of a work dispute that impacts two or more competing employee groups does not necessarily mean that a Jurisdictional dispute appropriately exists under Sections 8(b)(4)(D) and 10(k) of the NLRA. *Safeway Stores*, 134 N.L.R.B. at 1322 (“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

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dispute' exists”). The Board's Jurisdictional dispute machinery erected under Sections 8(b)(4)(D) and 10(k) is intended to resolve those disputes where two or more employee groups, each with a facially valid claim to the work in dispute, leave the employer in the position of having to decide which of these valid claims is the most meritorious.

As the D.C. Circuit observed, Congress enacted Sections 8(b)(4)(D) and 10(k) “to allow for the peaceful resolution of competing claims between rival groups of employees.” *ILWU, Local 62-B*, 781 F.2d at 923-24 (citing 93 Cong. Rec. 3424 (1947) (remarks of Rep. Hartley); 93 Cong. Rec. 3227-28 (1947) (remarks of Sen. Lucas); *Safeway Stores*, 134 N.L.R.B. at 1322). In disputes such as these, “the employer ordinarily stands aloof. ‘[I]n most instances, [the quarrel] is of so little interest to the employer that he seems perfectly willing to assign work to either [group of employees] if the other will just let him alone.’” *ILWU, Local 62-B*, 781 F.2d at 924 (*quoting CBS*, 364 U.S. at 579).

A jurisdictional dispute need not be found to exist where, as here, an employer's unilateral conduct has precipitated the dispute, by depriving one employee group of work it had traditionally performed pursuant to a collective bargaining agreement and reassigning the work to another employee group that previously had asserted no claim to the work. In such instances, the Board and the courts recognize that the employer is not entitled to the protections afforded under Sections 8(b)(4)(D) and 10(k). *Safeway Stores*, 134 N.L.R.B. at 1323; *IBEW Local 292 (Franklin Broadcasting Co.)*, 126 N.L.R.B. 1212, 1214 (1960); *USCP- Wesco*, 827 F.2d at 585. Rather, the matter is appropriately considered a contractual work preservation dispute between the employer and the employee group that had traditionally performed the work under a collective bargaining

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agreement until the employer decided to reassign it. *See, USCP-Wesco*, 827 F.2d at 585, affirming *USCP-Wesco*, 280 N.L.R.B. at 821-22, 823; *ILWU, Local 62-B*, 781 F.2d at 925; *IBEW Local 103 (T Equip. Corp.)*, 298 N.L.R.B. 937, 939-40 (1990); *Seattle Bldg. & Constr. Trades Council (Seattle Olympic Hotel Co.)*, 204 N.L.R.B. 1126, 1127 (1973); *Safeway Stores*, 134 N.L.R.B. at 1323. Indeed, it is a “familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.” *Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892). This principle “has particular application to the construction of labor legislation.” *National Woodwork*, 386 U.S. at 619.

The importance of ensuring that disputes concerning “job security and employment stability” are handled through collective bargaining is firmly recognized. *National Woodwork*, 386 U.S. at 640 (quoting *Fibreboard Paper Prods v. NLRB*, 379 U.S. 203, 225 (1964) (*Stewart, J., concurring*)). It is therefore well established that unions may lawfully demand contractual provisions “preserving for the contracting employees themselves work traditionally done by them,” and that these provisions are binding and enforceable. *NLRB v. Enterprise Ass'n of Pipefitters*, 429 U.S. 507, 517(1977); *See, National Woodwork*, 386 U.S. at 629. As the Supreme Court has emphasized, “[t]he effect of [such] work preservation agreements on the employment opportunities of employees not represented by the union, no matter how severe, is of course irrelevant... so long as the union had no forbidden secondary purpose.” *NLRB v. ILA*, 447 U.S. 490, 507 n.22 (1980).

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III. The Facts of This Case are Nearly Indistinguishable from Sound Precedent Finding a Work Preservation Dispute

The facts of this case are nearly indistinguishable from the sound precedent both in *Safeway Stores*, 134 N.L.R.B. 1320, and *USCP-Wesco*, 280 N.L.R.B. 818, which analyzed and discussed work preservation disputes and jurisdictional disputes. In *Safeway Stores*, employees represented by Teamsters Local 107 had long been employed by Safeway as drivers. Safeway terminated all of the drivers in the bargaining unit in violation of its collective bargaining agreement with Local 107, and reassigned their work to Safeway drivers represented by other Teamsters locals at other locations, who had not made previous demands for the work. *Id.* at 1321, 1323. The Board found no jurisdictional dispute and quashed the notice of Section 10(k) hearing. The Board reasoned that “the employer by his unilateral action created the dispute, by transferring work away from the only group claiming the work,” where that claim for work involved “jobs which had been secured for more than 10 years by a series of collective-bargaining agreements until Safeway suddenly terminated the bargaining relationship.” *Id.* at 1323.

*Safeway Stores'* vitality with regard to work preservation disputes continues to be recognized. *See, e.g., ILWU Local 62-B*, 781 F.2d at 924-25; *General Teamsters Local Union No. 174 (Airborne Express, Inc.)*, 340 N.L.R.B. No. 20 (2003), 2003 WL 22142889; *USCP-Wesco*, 280 N.L.R.B. at 822; *Plumbers & Gasfitters Local Union No. 36 (Weinheimers, Inc.)*, 219 N.L.R.B. 1016, 1018 n.2 (1975); *Seattle Bldg. & Constr. Trades Council (Seattle Olympic Hotel Co.)*, 204 N.L.R.B. 1126, 1127 (1973).

In *USCP-Wesco*, Safeway had for approximately 20 years used its own employees, represented by union locals affiliated with the United Food and Commercial

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Workers (“UFCW”), to handle, price, stock, and order its non-food and variety merchandise. Safeway’s collective bargaining agreement with the UFCW prohibited, with limited exception, the subcontracting of bargaining unit work. Nonetheless, after historically using its own employees, Safeway violated its UFCW agreement and subcontracted the bargaining unit work to Wesco employees. The UFCW grieved the subcontracting, and prevailed in their grievance arbitration. Learning of the arbitration decisions, the union representing Wesco’s employees threatened to picket Wesco and Safeway if the work were reassigned to Safeway’s employees. 280 N.L.R.B. at 818-19.

The Board in USCP-Wesco held that although the facts satisfied the criteria for a jurisdictional dispute under Sections 8(b)(4)(D) and 10(k), the case more properly was considered a contractual work preservation dispute between Safeway and the UFCW. The Board emphasized that the UFCW employees had performed the disputed work under their collective bargaining agreements and no new work was involved. *Id.* at 821-22. Accordingly, the Board found that the UFCW locals sought only to enforce the no-subcontracting provisions in their collective bargaining agreements and protect their bargaining unit work from reassignment. *Id.* at 820. As the Board observed in that case, finding a jurisdictional dispute every time an employer like Safeway alters a past practice of work assignment and breaches a contractual promise to preserve work for a particular group of employees “would not promote the private settlement of such disputes through the collective-bargaining process. To hold that this dispute is a jurisdictional dispute to be decided by the Board would not allow the UFCW employees the benefit of their negotiated work preservation clause. The clause would be unenforceable, and Safeway would be permitted to ignore its collective-bargaining obligation.” 280 N.L.R.B. at 821.

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The Board concluded by noting that “Safeway here is not the ‘innocent’ employer that Section 10(k) was intended to protect.” 280 N.L.R.B. at 823.

In some circumstances, an employer's deliberate actions in creating a dispute will not always deny it the right to a resolution of a Section 8(b)(4)(D) charge. *See, e.g., IBT, Local 107 (Reber-Friel Co.)*, 336 N.L.R.B. 518, 520-21 (2001). However, in that case the Board found material, if not dispositive, the fact that the competing unions had not previously performed the work in question. *Id.*

Here, too, Image Exhibit Services created the dispute through unilateral action, by transferring work away from the Teamsters—the only union that had a tradition of performing it pursuant to a collective bargaining agreement. The Teamsters Local No. 631, like the UFCW in *USCP-Wesco*, possessed a contractual and historical claim to the disputed work at the time that Image attempted to enter into a contract with the Carpenters and assign the work to the Carpenters. In contrast, the Carpenters’ “claim” and threatened economic action derived only from its desire to retain the new work wrongfully assigned to its members. Indeed, when the primary agreement between Image and the Carpenters was executed, it was the first of its kind between the parties and the Carpenters had no serious contractual basis to claim the work, nor a prior history of performing it, and there is no contention that they specifically demanded it.

These facts bring this case squarely within both *Safeway Stores* and *USCP-Wesco*. In each case, one union had a clear contractual claim to the work that was transferred to employees represented by a different local or union that had not made prior demands for it. Although in *USCP-Wesco*, Safeway violated a contractual no-subcontracting clause while here Image violated a contractual work assignment clause (or the primary and

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secondary agreement provisions), the difference is not material. Both provisions share the same goal of safeguarding against the erosion of bargaining unit work to employees outside the unit.

The Board should concluded, therefore, that this case is fully in accord with *USCP-Wesco*, 827 F.2d at 585-86, where the Board's review of similar circumstances determined that the real issue was that a work preservation dispute and not a jurisdictional dispute was involved. The Board should find that the dispute was precipitated by the employer's unilateral transfer of work away from its employees, in violation of a work preservation provision in its collective bargaining agreement with the Teamsters.

IV. Alternative Procedures Exist to Settle the Dispute Between Teamster Local No. 631 and Image Exhibit Services

The Teamsters' collective bargaining agreement with Image contains a grievance and arbitration provision specifically to resolve alleged violations of that agreement. That process is available to the Teamsters and Image to settle their contractual differences over Image's future assignment of the convention I&D work. Federal policy also favors resolution of disputes under collective bargaining agreements through arbitration, the procedure the parties themselves established. 29 U.S.C. § 173(d); *Gateway Coal Co. v. UMWA*, 414 U.S. 368, 377-79, 382 (1974); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 (1960); *USCP-Wesco*, 827 F.2d at 586. Grievance arbitration is accordingly available as an alternative method of settling

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disputes over work assignments. *Carey v. Westinghouse Elec. Corp.*, 375 U.S. 261, 270-72 (1964).

Significantly, Article XVIII, Section A of the Teamsters Agreement provides that:

**The Employer and the Union agree that the Grievance and Arbitration procedures set forth in the Agreement shall be the sole and exclusive means of resolving all grievances arising under this Agreement, and, further, that administrative and judicial remedies and procedures provided by law shall be the sole and exclusive means of settling all other disputes between the Union and the Employer. Accordingly, neither the Union nor any employee in the bargaining unit covered by this Agreement will instigate, promote, sponsor, engage in or condone any strike, sympathy strike, slowdown, concerted stoppage of work, or any other interruption of work.**

If, as Image alleges through their filing of the present charge, they fear the Teamsters would decide to ignore the contractual grievance procedure and instead resort to picketing to force future compliance with its claimed contract rights to the disputed I&D work, Image would have recourse to the federal courts under Section 301 to seek to enjoin such use of economic force. *See, Kansas City S. Transp. Co. v. Teamsters Local #41*, 126 F.3d 1059, 1064-67 (8th Cir. 1997) (affirming injunction against union picketing under *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970)). Regardless of “[w]hether the activity is striking or picketing, the right to concerted action over a particular grievance was bargained away in favor of a more peaceful mode of resolution.” *Abraham & Straus, Inc. v. IUOE, Local Union No. 30*, 806 F. Supp. 366, 371-72 (E.D.N.Y. 1992) (granting injunction against union picketing under *Boys Markets*); *Accord Catalytic, Inc. v. Monmouth & Ocean County Bldg. Trades Council*, 829 F.2d 430, 434 (3d Cir. 1987), *cert. denied*, 485 U.S. 1020 (1988).

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The Supreme Court has long viewed Section 301 of the NLRA, 29 U.S.C. § 185, as a “congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts.” *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985). A Board decision in this case not to apply the NLRA's special jurisdictional dispute provisions would be consistent with this federal policy favoring the resolution of disputes concerning the interpretation of collective bargaining agreements through primarily, the arbitration and grievance procedures, but if necessary, ultimately, through Section 301 procedures. *Id.*; *Smith v. Evening News Ass'n*, 371 U.S. 195, 199 (1962).

## CONCLUSION

For the foregoing reasons, Teamsters Local No. 631 respectfully requests that the Board quash Notice of the Section 10(k) hearing and find that the dispute fundamentally involves preservation of work traditionally and historically performed by the Teamsters through their collective bargaining agreements with the employer and not a Jurisdictional Dispute between the Teamsters and Carpenters. The contract dispute between the Teamsters and Image should then be settled according to the arbitration provisions contained in the collective bargaining agreement or through Section 301 procedures if the arbitration procedures prove unsuccessful. In the alternative, if the Board finds that a true Jurisdictional Dispute exists, based on the facts and evidence presented at the hearing, and on the briefing of the parties, the Board should hold that the Teamsters are entitled to

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the disputed work and that the only enforceable primary labor agreement is that of the Teamsters.

Respectfully submitted:



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of July, 2009, a copy of TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS LOCAL NO. 631, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS' Supplemental Brief on Work Preservation Doctrine was served via electronic mail, upon the following:

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