

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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New England Regional Council of Carpenters, Local 33 (New England Finish Systems)	)	
And	)	01-CD-183789
International Union of Painters and Allied Trades, District Council 35.	)	
<i>Consolidated with:</i>	)	
New England Regional Council of Carpenters, Local 33 (Colonial Systems, Inc.)	)	
And	)	01-CD-183838
International Union of Painters and Allied Trades, District Council 35.	)	

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POST-HEARING BRIEF OF  
NEW ENGLAND FINISH SYSTEMS AND COLONIAL SYSTEMS, INC.

The employers in these two consolidated, pending charges, New England Finish Systems and Colonial Systems, Inc. (collectively, the “Employers”), jointly file this post-hearing brief. The Employers believe that the evidence in this matter clearly demonstrates that the disputed work must be assigned by the Board, pursuant to Section 10(k) of the National Labor Relations Act as amended (the “Act”), to the Carpenters rather than to the Glaziers of District Council 35. The Employers also believe that the evidence in this matter clearly demonstrates that the scope of the Board’s order must be broad and area-wide (i.e., co-extensive with the unions’ overlapping geographic jurisdiction).

## STIPULATIONS

All parties stipulated to the following facts:

1. New England Finish Systems (“NEFS”) and Colonial Systems, Inc. (“Colonial”) are construction employer over which the National Labor Relations Board (“Board”) has jurisdiction.
2. International Union of Painters and Allied Trades, District Council 35 (“DC 35”) and New England Regional Council of Carpenters, Local 33 (“Carpenters”) are labor organizations within the meaning of Section 2 (5) of the National Labor Relations Act.
3. Neither NEFS nor Colonial is failing to conform to an order or certification of the Board determining the bargaining representative for the employees performing the work in dispute.

(B. Exh. 2)

## WORK IN DISPUTE & HEARING SCHEDULE

On the request of the parties, the Notice of Hearing issued by Region I on September 28, 2016 was revised and Notice of Rescheduling Hearing and Clarifying Disputed Work was issued on November 9, 2016. That Notice described the disputed work as:

Work relating to the installation of glass shower doors at the project on Parcels B&C in the Seaport District, Boston as described in Case 01-CD-183789. Work relating to the installation of glass/glazing, frames, tracks, glass doors, glass door hardware and rollers, glass partitions of any size, and/or glass demountable partitions of any size at the following projects: (1) 1 Federal Street, 8<sup>th</sup> Floor, Boston; (2) the Boston Public Library, College Planning Center; (3) One Memorial Drive, Cambridge, Microsoft; (4) 200 Berkeley Street, Floors 9 – 12, Boston, and (5) Partners Healthcare, Assembly Row, Somerville as described in Case 01-CD-183838 and (6) 125 High Street, Boston, Floors 5-9, as described in Case 01-CD-183789.

(B Exh. 1)

While different terminology is used by the various parties to this dispute to describe demountable partitions, they are generally considered to be modular walls which may be easily disassembled or reconfigured and moved from one location to another without significant repair to the building. (Vol. 6, 1127. E. Exhs. 1, 3, 4. P. Exh. 26, 27)

Hearings were held on November 1 and 28, and on December 1, 8, 9, and 12, 2016.

#### ABSENCE OF AN AGREED UPON METHOD FOR RESOLUTION OF JURISDICTIONAL DISPUTES

The Carpenters' collective bargaining agreement ("CBA") states:

In the event a jurisdictional dispute arises, the disputing unions shall request the other union. . . to send representatives to meet with reps of the Union and Employer to settle the dispute. If the above procedure . . . fails to resolve the problem, then the Employer, at the request of the Union , agrees to participate in a tripartite arbitration with all the disputing parties.

In this instance, the Carpenters never agreed to or requested either Employer to agree to participate in a tripartite arbitration. Nor have the Carpenters been signatory to the AFL CIO Plan for Settlement of Jurisdictional Disputes since 2000. (Vol. 4, 539) Therefore, the only manner in which the employers could seek resolution to this wide ranging dispute, which affects them as well as many other contractors, was to seek the assistance of the Board through the filing of 8(b)(4)(D) charges.

#### SECTION 8(b)(4)(D) VIOLATION HISTORY

##### The Colonial Dispute

Colonial Systems, Inc. has collective bargaining agreements with both the Carpenters and DC 35. (Vol. 2, 37) Despite a number of discussions with DC 35 business agents in which DC 35 asked for "more" work, Colonial first became aware of DC 35's interest in taking over all demountable partition work on August 23, 2016 when it received charges filed with the DC 35 Joint Trade Board ("JTB") asserting jurisdiction over installation of all glass and the frames or

tracks of demountable partitions pursuant to Article II, Section 2 of the DC 35 collective bargaining agreement. (Vol. 2, 38. Jt. Exhs. 4, 2)

These charges concerned four jobs that had been completed by the date of the JTB hearing on September 13, 2016: One Memorial Drive, Cambridge; One Federal Street, Boston; 200 Berkeley Street, Boston; the Boston Public Library in Boston and one job that was ongoing, Partners Healthcare at Assembly Square in Somerville. Some of this work involved pre-framed, “unitized” or “glazed” partitions, others required the construction of a frame into which raw glass was inserted. (E. Exhs. 1, 2, 3, 6)

The JTB, which is comprised of equal numbers of employer and union representatives, did not vote to take the charges forward. But, DC 35 filed for arbitration of the assignments. (Vol. 2, 53)<sup>1/</sup>

Colonial performs between 1500 - 2000 jobs a year, half of which involve demountable partitions. (Vol. 2, 57, 162) As a result, Colonial’s Vice President of Operations, Matt McKenna, is in frequent contact with Carpenters Representative John Murphy. In two separate telephone calls on or about September 7 and September 11 or 12 of 2016, Mr. McKenna informed Mr. Murphy, of the charges before the JTB and of three 3 large upcoming glass demountable partition installation contracts (111 Huntington Avenue, One Post Office Square and 888 Boylston Street). (Vol. 2, 50-52) In each of these discussions, Mr. Murphy advised Mr. McKenna that the work in question belonged to the carpenters and there would be “jobsite actions” and grievances against Colonial if the work were given to glaziers.<sup>2/</sup> (Vol. 2, 51, 52) Mr. McKenna testified that he believed this threat signified there would be a picket line at his

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<sup>1/</sup> On January 3, 2017, after the closing of the hearing, DC 35 filed an additional four charges with the JTB against Colonial for its construction of tracks or frames and installation of glazed demountable partitions.

<sup>2/</sup> Mr. Murphy testified that he did not think about the particular jobs being discussed in stating there would be “job actions” because grievances were being brought and “our work was being challenged.” (Vol. 3, 446)

jobs and he noted, in his testimony, that union picketing would not necessarily be limited, but could exist at all Colonial's jobsites. (Vol. 2, 135) Following receipt of these threats Colonial filed an 8(b)(4)(D) charge against DC 35 with the NLRB. (B Exh. 1 (c))<sup>3/</sup>

### The NEFS Dispute

NEFS has been signatory to an agreement with the Carpenters since its inception in 1985 and was also signatory to collective bargaining agreements with DC 35 from 1990 until July 15, 2016 on which date it repudiated its DC 35 agreement. (P. Exhs. 5, 9, 10)

Jurisdictional disputes between NEFS and DC 35 began with NEFS' installation of glass shower doors in the summer of 2015. At that time, NEFS employed carpenters to install 300 shower door enclosures and unframed mirrors on the Avalon 1 project on Stuart Street in Boston under contract to supplier, Specialty Services. (Vol. 2, 230-231) A DC 35 signatory employer, Paint Systems, had a contract with Specialty Services to install raw glass in the door frames.<sup>4/</sup> (Vol. 2, 230-231, 240) This was the first time NEFS had installed shower doors. (Vol. 2, 234, 239) Paul Canning, Business Representative of DC 35 demanded that glaziers be assigned the mirrors and all the shower door installation at the site. (Vol. 2, 241) The issue was resolved when Mr. Canning and Carpenters Business Representative John Murphy met and agreed that a composite crew would complete the work. (Vol. 2, 228, 236, Vol. 5, 940)

In 2016, Specialty Services awarded installation of the 300 glass shower doors at a second Avalon multi-family housing project on Nashua St. in Boston, by allocating the work in the manner agreed to at Avalon1, 50% to glaziers of Paint Systems and 50% to carpenters of NEFS. (Vol. 2, 240) Paint Systems glaziers started to work first and after 5 or 6 weeks, when carpenters were available to be assigned to the site, Mr. Canning notified NEFS that the glaziers

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<sup>3/</sup> Colonial did not reassign the contested work to glaziers.

<sup>4/</sup> Specialty Services has no union contracts.

had started the job and were going to finish it without carpenters. (Vol. 2, 238, 240, 241. Vol. 5, 945) In a discussion with NEFS President Ray Houle, Carpenter Representative Murphy refused to relinquish the work and NEFS filed charges in NLRB Case No. 1-CD 180180. (Vol. 2, 241-243. E. Exh. 8) This Board charge was resolved by a non-precedential settlement providing for equal numbers of carpenters and glaziers installing the glass shower door enclosures at Avalon 2. (Vol. 2, 243)

NEFS had been installing demountable partitions since the late 1980s but the first grievance received by NEFS was that filed by DC 35 with the JTB on August 23, 2016 relating to 125 High Street.<sup>5/</sup> (Vol. 3, 301- 302, 331.) This charge claimed the Carpenters installation of demountable glass doors and hardware at 125 High Street in Boston violated the trade jurisdiction of the glaziers set out in Article II, Section 2 of its collective bargaining agreement. (Jt. Exh. 3). The JTB, which is comprised of equal numbers of contractors and union representatives, held a hearing on September 13, 2016 and failed to issue notice of a violation of the union contract. (Jt. Exh. 5)<sup>6/</sup> DC 35 then filed for arbitration of their dispute with NEFS. (Vol. 3, 308-309)

Ray Houle, President of NEFS, informed Carpenters Business Representative Murphy of these charges and Mr. Murphy, challenged DC 35's assertions saying the work traditionally belonged to carpenters and he would not relinquish it. He threatened to engage in a jobsite action if the work were given to the glaziers. Mr. Houle testified that he understood this to be a threat of picketing or a work stoppage. (Vol. 3, 310, 370)<sup>7/</sup>

Because of his concerns regarding the dispute at the Avalon jobsites as well as DC 35's filing for arbitration on the 125 High Street charges, Mr. Houle attempted to preempt potential

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<sup>5/</sup> The demountable partitions erected in the 1980s were at the John Hancock building.

<sup>6/</sup> NEFS did not appear at the JTB hearing as it had repudiated its agreement in July of 2016.

<sup>7/</sup> NEFS did not change its work assignment.

jurisdictional disputes that could delay or halt all work on Seaport Parcels B & C, two large projects involving shower door enclosures that had been contracted to both Paint Systems and NEFS by Specialty Services. (Vol. 3, 312) To accomplish this, Mr. Houle communicated with both Mr. Canning of the Glaziers and Mr. Murphy of the Carpenters. (P. Exh. 4) Mr. Murphy responded stating that he was amenable to a composite crew performing the work. (Vol. 3, 314) DC 35 attorney Paul Kelly responded with an email asserting, “Installation of shower doors has long been the work of the glaziers” and stating DC 35 would protest an assignment to the carpenters by all legal means. (E. Exh. 10) Mr. Murphy then threatened Mr. Houle that the Carpenters would engage in a “job action” if their work was given to the Glaziers. (Vol. 3, 320) At hearing Mr. Houle stated that he assumed that this intimated there would be a picket line on the jobsite or a work stoppage. (Vol. 3, 320, 370) He further stated that, as a result of the two disputes (125 High Street and Seaport B&C) he filed the charges relevant to this hearing. (B Exh. 1(a))<sup>8/</sup>

When questioned about his statements to the Employers concerning “job site disputes” or “job actions,” Mr. Murphy admitted to the statements and testified that a job action could mean a picket line, a demonstration or other actions. (Vol. 3, 445)

Evidence was presented at hearing of numerous other charges concerning the installation of demountable partitions that were filed by DC 35 with the JTB, e.g., five other charges were filed against Colonial (P. Exh. 25), Boston Install (E. Exh 12A), Johnson & Goglia Construction, Inc. (E. Exh. 12F), Interstate Office Partitions (E. Exh. 13) and East Coast Installations (E. Exh. 14). Each charge claimed a violation of DC 35’s trade jurisdiction with respect to the installation of demountable partitions or their frames and tracks.

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<sup>8/</sup> On January 3, 2017, DC 35 filed a charge with the JTB concerning the installation of shower enclosures at Parcels B & C.

## THE CHARGING PARTIES

### Colonial Systems, Inc.

In 1992 union carpenter Gene Kosman founded Colonial and signed a collective bargaining agreement with the Carpenters. (Vol. 2, 140) Initially, Colonial's work involved the installation of desks, cabinets, shelves, computer stations, lockers conference tables, window treatments, cubicles and other furniture. (Vol. 2, 60) Colonial built cubicle work stations of materials such as wood, fabrics, metal, glass and composite materials. (Vol. 2, 60) When demountable glass office walls were designed by the furniture companies for which Colonial worked and these walls began replacing cubicles in the early 2000s, Colonial employed carpenters to install them. (Vol. 2, 140, 149) Colonial has always installed furniture, cubicles and demountable glass walls or partitions with its regular crew of carpenters. (Vol. 2, 132, 150-151)

In 2006 Colonial had an opportunity for work on a large project involving the installation of raw glass within the jurisdiction of the glaziers and Gene Kosman signed an agreement with DC 35. (Vol. 2, 141) Colonial, however, continued installing all demountable partitions with carpenters and used DC 35 glaziers to install only raw glass. (Vol. 2, 132, 150-151)

Colonial contracts with suppliers, owners, general contractors and with the furniture companies which design, manufacture and supply demountable partitions such as Teknion, DIRTT, Vaughan Walls, Modernus and Steelcase. (P. Exhs. 25-30) A number of these suppliers or manufacturers require certification of the employees installing their product, e.g. Teknion, DIRTT and Steelcase all require that the installers be certified or led by a certified individual. (Vol. 2, 160) Colonial supervisors achieve certification following three to five day trainings at

the manufacturers' factories. (Vol. 2, 161) The supervisors then instruct and oversee Colonial employees engaged in the installation of the manufacturers' partitions. (Vol. 2, 161)

Of the 13 witnesses DC 35 member witnesses testifying at hearing, none were with companies which had employees certified to perform this work and none had ever done business with the furniture companies manufacturing the demountable walls installed by either Colonial or NEFS. (Vol. 5, testimony of DC 35 witnesses)

Colonial has between 1,500-2000 separate work orders a year, many of very short duration. (Vol. 2, 162, 193) Colonial Vice President of Operations McKenna testified that 70-75% of these contracts calling for the installation of demountable partitions also include installation of furniture.<sup>9/</sup> (Vol. 2, 134) On those jobs subject to charges brought before the JTB in September of 2016, four of the five contracts, also required the installation of office furniture, i.e.,

Boston Public Library - Demountable glass partitions, furniture and cubicles (P. Exh. 1. Vol. 2, 99)

One Memorial Drive - Demountable glass partitions and furniture (Vol. 2, 113)

One Federal Street. - Demountable glass partitions and furniture (Vol. 2, 89-95)

Partners, Assembly Sq. - Demountable glass partitions and furniture (Vol. 2, 80-81)

200 Berkeley – Demountable glass partitions (Vol. 2, 114)

Colonial employs a regular crew of 60 – 90 carpenters of which 45 – 50 have been with the company for 12 – 15 years. (Vol. 2, 141) When a contract requires the installation of significant amounts of raw glass, Colonial contacts the DC 35 Hall to request glaziers. (Vol. 2,

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<sup>9/</sup>Carpenters' representative Al Peciaro testified that 50% of the work of most Furniture Installation contractors such as Colonial, East Coast International Office Partitions, Johnson & Goglia and Boston Installation is installing demountable partitions. (Vol. 4, 545) These are the contractors against whom DC 35 has levied charges with the JTB.

56) The hours worked by Colonial's work force demonstrate that the great bulk of its business is performed by carpenters. Of the 138, 419 hours worked in 2016, only 5%, 7919, is performed by glaziers. (Vol. 2, 142. E. Exh. 5)

### NEFS

From its inception in 1985, NEFS performed work with union carpenters including installing metal stud framing and drywall and other interior fit up work within the jurisdiction of the Carpenters. (Vol. 2, 212-215, 217. P. Exh. 5)<sup>10/</sup> It employs a steady crew of 160 – 250 carpenters, of which most of the lead foremen have been with the company for over 10 years and the rest of the crew for over 5 years. (Vol. 3, 321) NEFS signed a contract with the DC 35 in 1990 because Tapers, who were members of that union, were needed to apply joint compound and tape to dry wall and drywall seams. (Vol. 2, 216. P. Exh. 9) Glaziers had not yet merged with DC 35 at that time. (Vol. 5, 892)

When NEFS President Ray Houle started work with NEFS in 1988, NEFS carpenters were installing the Vaughan Wall System of demountable partitions at the John Hancock Building in Boston with carpenters. (Vol. 2, 223) By the early 2000s, demountable walls were often made of glass and NEFS continued its practice of installing them with carpenters, not glaziers. (Vol. 2, 224)

NEFS specializes in Division 10 interior work, i.e., window treatments such as motorized shades, bathroom partitions, drywall, framing, interior demountable partitions, cabinets, doors and hardware including hinges, locks and all hardware applied to the door or partition package. (Vol. 2, 212-215, 217-218, 224)

In 2015 it received its first contract to install shower doors at Avalon 1 for supplier Specialty Services. (Vol. 2, 300) After the Carpenters and DC 35 agreed to a composite crew on

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<sup>10/</sup> It is also signatory to collective bargaining agreements with Laborers and Plasterers. (Vol. 2, 228)

Avalon 2, the supplier, Specialty Services, contracted with both Paint Systems (a DC 35 employer) and NEFS to provide a composite crew for installation of approximately 400 shower doors at each of two other buildings, Seaport Parcels B&C. (Vol. 3, 312)

The use of composite crews to install shower doors is not uncommon. Cheviot Corporation, which is signatory to both the Carpenters and DC 35, has, for many years, installed shower doors with composite crews. This is evidenced by the list of ten Cheviot Corporation shower door contracts, between 2006 and 2016, in Carpenters' Exhibit 3.

Carpenters Representative Al Peciario testified that the Carpenters have a history of hanging doors. "Wood doors, metal doors, glass doors, whatever they might be, a door is a door. Different applications, but a door is a door." (Vol. 4, 492) He also noted that, similar to demountable partitions, doors are often pre-glazed at a factory. (Vol. 4, 492)

NEFS, like Colonial, has a history of contracting with suppliers and furniture manufacturers, most particularly Infinium Wall which manufactures a demountable glass wall system. (Vol. 2, 219, E. Exh. 6) This modular system arrives pre-framed to the construction site and is snapped into place. (Vol.2, 220) It is the system installed at 125 High Street. (Vol. 2, 219, 220. E. Exh. 6) NEFS also had carpenters install Infinium walls at Brown University in Providence, RI and at the Charles Schwab offices in Boston. (Vol. 3, 304) In addition, to pre-framed installations, NEFS installs the aluminum channels for the modular systems as well as the frames of Rayco and Frameworks that accept glass demountable partitions. (Vol. 2, 221. E. Exhs. 3, 4) NEFS employees are trained and certified by Carveart and Infinium at the supplier's factories and at NEFS jobsites. (Vol. 3, 304)

NEFS's contracts usually cover more than just demountable partitions. For example, at the 125 High Street job, NEFS installed drywall and window treatments in addition to

demountable partitions. At Avalon 2, NEFS installed window treatments and medicine cabinets in addition to shower enclosures.

NEFS does \$30 million worth of work each year. Ten percent of that work is the installation of glass demountable partitions. (Vol. 2, 222)

The Glaziers merged with the painters and tapers union and became part of DC 35 in 1996 or 1997. In 2002, the DC 35 contract, which had previously covered only painters and tapers, also covered glaziers. (Vol. 4, 667) On July 15, 2016, NEFS notified DC 35 that it had not employed any member of DC 35 for 6 years and was repudiating its CBA with the union. (P. Exh. 10) It had never employed a glazier. (Vol. 2, 224) When in need of glaziers to install raw glass, NEFS subcontracts out that work. (Vol. 3, 324) It, however, utilizes its carpentry crew to install raw glass if the work required is limited or intermittent. (Vol. 2, 253)

Ray Houle of NEFS is neither a manager nor an owner of Paint Systems of New England. Paint Systems and NEFS are, however, located at the same address in Salem, New Hampshire. (Vol. 2, 236)

#### DISTINCTIONS BETWEEN CHARGING PARTIES AND THE DC 35 CONTRACTORS

##### 1. Charging Parties Generally Work for Owners, Manufacturers and Suppliers

Both Colonial and NEFS testified that they generally install glass demountable partitions and demountable doors (hereinafter together called “demountable partitions”) under contract to suppliers of manufacturers. (Vol. 2, 150, 225)

Both companies explained that, they are often subject to contractual certification requirements requiring specially certified employees to oversee and manage the installation work. (Vol. 2, 160) To meet these requirements, their employees are certified either at the manufacturers’ factories or on the job. (Vol. 2, 54-55, 224, 304)

East Coast Installation's Labor Relations Director and Foreman, Michael Twomey, testified that East Coast is also signatory to both the Carpenters and DC 35 contracts but uses carpenters for installation of glass demountable partitions manufactured by companies such as International Office Concepts, Abote and Farro (three Italian manufacturers), Teknion, Haworth, and DIRTT.<sup>11/</sup> (Vol. 3, 251-254, 258) He has also sent foremen to training with manufacturers because Teknion and Haworth require that training for installers of their product. (Vol. 3, 258-259) East Coast also utilizes carpenters to install tracks, frames, studs, top track, bottom track and unitized or pre-framed glass that is iron, metal or aluminum clad. (Vol. 3, 252-253) Like the charging parties, East Coast employs glaziers only to install raw glass. (Vol. 3, 253)

None of the 14 DC 35's signatory companies which testified at hearing bid to or have done business with the demountable systems manufacturers or furniture companies which provide East Coast Installations, Colonial or NEFS. DC 35 witnesses testified that they do not install manufactured pre-framed glass, and do not work with the modular systems sold by any of the furniture companies. (Vol. 5, D. Itri 872; D. Carter 725; R. Mauro 728-729; J. Suprenat 817, 820, 826; R. Manning 840)<sup>12/</sup> Most of these witnesses also stated that they would not buy such systems from a manufacturer because their companies fabricate the work they install (Vol. 5, D. Carter 726; M. Stone 710; J. Suprenat 822; T. Daley 770) Additionally, they testified that they usually work as subcontractors to general contractors, not with suppliers, manufacturers or owners. (Vol. 5, D. Carter 723; R. Mauro 730; T. Daly 767; J. Suprenat 816, 819)

## 2. The Carpenters Are Flexible and Can Be Assigned to Other Work of the Contractors

An incentive consistently mitigating in favor of the use of carpenters is the fact that work on a construction site is often delayed due to the delivery of materials, preparatory work of other

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<sup>11/</sup> DIRTT is an acronym for "Do It Right This Time."

<sup>12/</sup>J. Burke testified that he only services broken glass. (Vol. 5, 831)

trades not being performed on time, or simply the unavailability of an elevator. DC 35 witness M. Moore spoke to this issue explaining that the number of shower doors that can be installed depends on the material available on site, wait time for the elevator and materials being moved out of the way so that the installer can move around. (Vol. 5 790-791) Mr. Kosman testified that one of the reasons he prefers to use carpenters, even to install raw glass, is because they are more efficient, “They have been trained. . . We have more flexibility if the need be to shift them from job task to job task than we would have with a glazier.” (Vol. 2, 153) They are more efficient because they have years of furniture installation experience and familiarity with the kinds of products that Colonial installs. (Vol. 2, 153) This enables the company to move them to another task if demountable partitions have not arrived on schedule. The same cannot be said for glaziers.

Mr. Houle testified that for reasons of productivity, at 125 High Street, raw glass doors were not installed by glaziers because only 2-3 doors were ready at a time. (Vol. 3, 306) He stated that assignments were made to the Carpenters for reasons of efficiency.

(It’s one less trade to coordinate with, if the carpenters are doing all of the work, they’re here from the beginning of the job to the end of the job. . . so we don’t have to do another download to another trade. And we’ve just found that the work ethic seems to be a little different between glaziers and carpenters. The carpenters are a little more production oriented and the glaziers are set in a box. They can do what their scope of work is, which is small.

(Vol. 2, 323)

Mike Twomey of East Coast Installations noted that carpenters are interchangeable and can be moved from one task to another. (Vol. 3, 255) He testified that East Coast carpenters are trained in different aspects of the work his company performs, they can “do mostly anything”, and of importance to him in using carpenters to install demountable walls is the fact that they can be moved to other construction if there is no demountable work available. (Vol. 3, 255, 280-

281) Mr. Twomey explained that if there is only an occasional piece of raw glass on a job, they have it installed by a carpenter. (Vol. 3, 289)

Obviously, by using the Carpenters for installation of demountable partitions and shower doors , when delays occurred, the carpenters could be assigned to other work the employer was performing on site such as installation of shelves, cabinets, window treatments or other furniture.

3. It is More Efficient and Economic to Use the Carpenters

Using carpenters also resulted in work being performed more quickly and less expensively. The professional capability of carpenters versus glaziers in installing these pre-manufactured demountable partitions was addressed by Gene Kosman. He noted that, DC 35 representatives at the JTB hearing in September of 2016 demonstrated the efficiency of carpenters by providing their estimates of the time it would take glaziers to perform the work involved at the locations subject to their charges:

	<u>DC 35 Estimate of Hours Using Glaziers</u>	<u>Actual Hours Using Carpenters</u>
Boston Public Library	(160 hours) 2 men for 10 days	64 hours (60% fewer hours)
200 Berkeley Street	(6000 hours) 6 men 6 months	1900 hours
100 Federal Street	1200 hours	800 hours

(Jt. Exh. 6. Vol. 2, 156, 157)

At the time Colonial was provided with these work hour estimates by DC 35 in September of 2016, these jobs had been completed for substantially less hours than it would have taken glaziers to perform the work.<sup>13/</sup>

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<sup>13/</sup> Additionally, it is neither efficient nor economic to employ tradespeople on a daily basis. For each employee hired, a jobsite manager must secure a W-4 and an I-9 and Mass. Gen. Law c. 148 §149 requires payment for all hours worked on the day of layoff or discharge. (Vol. 2, 56)

Mr. Houle noted that when carpenters were assigned to installing shower doors at Avalon 2, they performed twice as much work as the glaziers. (Vol. 2, 297. Vol. 3, 327)

4. The Skills Required and the Collective Bargaining Agreements

The tasks involved in installing demountable partitions include performing layout of a jobsite, organizing the delivery of the necessary materials and construction of the track or frame, when a track or frame is necessary. When the partitions arrive as pre-framed panels workers take the framed partitions and attach them to ceilings, floors or existing walls by clips, screws or other mechanical devices. (Vol. 4, 84, 522) Carpenters also install hardware on panels and doors. (Vol. 2, 84) Both trades provided evidence that their members had these or similar skills and frequently performed such work.

DC 35, however, was unable to provide evidence that it could perform work for the demountable partition manufacturers and suppliers because it had no members certified in the installation of demountable partitions and its witnesses testified that they had never contracted with the many demountable partition manufacturers and suppliers doing business with the Employers. (Vol. 5) Certification is required by a great many of the suppliers including Infinium, Carveart, Teknion, Steelcase and Haworth. (Vol. 2, 54)

Both collective bargaining agreements contained language relevant to the installation of partitions and doors. The Carpenter's collective bargaining agreement has a Furniture Addendum specifically relating to the terms of employment involving installation of demountable partitions, cubicles, knock down work stations and other furniture. (Jt. Exh. 1) That agreement also claims jurisdiction over the installation of doors, walls and acoustical treatments. (Jt. Exh. 1) As of 2008, Article II, Section 2 of the DC 35 Collective bargaining agreement included demountable partitions. (Vol. 5, 903. Jt. Exh. 2)

Therefore, since 2008, DC 35 has had the ability to file charges for violations of that agreement's Trade Jurisdiction article. (Jt. Exh 2, Art. II. Vol. 5, 903) Notwithstanding that language and the testimony of Business Representatives Paul Canning and Joe Itry, as well as that of many of their signatory employers acknowledging that carpenters have been performing installation of glass demountable partitions for over 10 years, this issue was apparently not considered sufficiently important to be raised before the JTB and no relevant arbitrations were filed until the summer of 2016. (Vol. 3, 256)

5. Colonial and NEFS Respect DC 35's Jurisdiction over Raw Glass

Even though Messrs. Kosman, McKenna and Houle all testified to their preference in using carpenters, they also all stated that glaziers were employed on their jobsites when a sufficient amount of raw glass was to be installed. Mr. Kosman noted that, while glaziers work on raw, unframed glass, it is not cost effective to hire a glazier to install one piece of raw glass and that Colonial contacts the DC 35 union hall when it needs glaziers. (Vol. 2, 164,209, 141) Mr. McKenna testified that, Colonial has had a consistent practice over 10 years of having glaziers handle raw glass, "By and large we assign raw glass to glaziers." (Vol. 2, 64, 114 131) If, however, he has a few panels of unframed glass he uses carpenters. (Vol. 2, 49) Mr. Houle stated that NEFS does not employ glaziers but subcontracts the installation of raw glass to Glazier signatory employers. (Vol. 2, 231,233, Vol. 3, 321-322, 324) Mr. Twomey of East Coast Installations stated that it was also the practice of his company to utilize glaziers to install raw, unclad glass. But if the glass had metal affixed to it, the work is given to carpenters. (Vol. 3, 270, 279-281)

## ARGUMENT

### I. THE BOARD HAS JURISDICTION TO DETERMINE THIS DISPUTE AND THERE IS HIGHLY PERSUASIVE BOARD PRECEDENT ON POINT

Section 8(b)(4)(D) of the Act prohibits unions from “forcing or requiring any employer to assign particular work to employees in a particular labor organization ... rather than to employees in another labor organization” unless the union activities are meant to require conformance to a Board certification or order.<sup>14/</sup> The Act provides, through the Section 10(k) hearing process, a means for efficient resolution of such disputes.

Of particular significance in the resolution of the current dispute is that the Board recently decided two related Section 10(k) demountable wall disputes that were very similar to the current ones. Those disputes occurred in the San Francisco, California, area between unionized glaziers and carpenters (i.e., Glaziers District Council 16 and Carpenters 46 Northern California Counties Conference Board) and concerned which local had jurisdiction over the installation of demountable walls with glass panel partitions. See Glaziers District Council 16 (Service West), 356 NLRB 760 (2011) (hereinafter “Service West I”) and Glaziers District Council 16 (Service West), 357 NLRB 560 (2011) (hereinafter “Service West II”). In those two matters the Board found that it had jurisdiction and then assigned all of the work in question to the carpenters.

Also of significance is that the Board previously decided a Section 10(k) dispute over whether unionized glaziers or another union (in that case Teamsters) should be awarded the work of assembling metal framed glass shower doors and tub enclosures. The Board awarded the work to the Teamsters, and not the glaziers. Of particular note is that the Board found that the factors of efficiency and economy both favored the employer’s use their current shower door

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<sup>14/</sup> It was stipulated that the work in dispute in the current matter is not directly covered by any Board orders or certifications. (B Ex. 2)

assembly workers rather than glaziers, since an award of the work to the glaziers “would necessitate special hiring for each occasional job inasmuch as the Employer does not engage in this work on a regular basis” while the employer’s regular (Teamster ) employees “are already available” as well as having “sufficient skill and experience to do the work.” Glaziers & Glassworkers Local Union 513 (Pittsburgh Plate Glass Company), 159 NLRB 1343 (1966) (“Glaziers Local 513”). The same is the case in the current matters.

For the reasons set out in Service West I, Service West II and Glaziers Local 513 the Board should award the disputed work in the current matters to the Carpenters and not to glaziers.

At their core these Board decisions stand for the simple principle that glaziers should not be awarded disputed work simply because the work involves some glass components, but instead the work should be assigned to the workers who are the regular employees of the employer, are experienced and able to perform the work, and create economies and efficiencies of operations.

A. ALL PARTIES STIPULATED THAT THE PARTIES CAME UNDER THE BOARD’S STATUTORY JURISDICTION

All parties stipulated, prior to the beginning of the hearing testimony, that these disputes came under the Board’s statutory jurisdiction, and there was no evidence presented to the contrary during the hearing. (B Ex. 2; see also Vol. 2, 24-29).<sup>15/</sup> Accordingly, this Board should find that it has such jurisdiction. See, e.g., International Union of Operating Engineers, Local 18 (Donley’s Inc.), 360 NLRB 903, 903-904 (2014).

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<sup>15/</sup> The only instance in which a Section 10(k) hearing concerning unions and employers within the Board’s statutory jurisdiction is not appropriate is where (i) all of the parties to the hearing are bound to an alternative agreed upon method for the voluntary adjustment of the dispute and (ii) this agreed upon procedure is brought to the attention of the Board within ten days of the filing of the charge. As discussed below (and presumably in the post-hearing brief of the carpenters union) in the current matter any claim that all parties are bound to an alternative agreed upon method for the voluntary adjustment of the dispute was waived (as it was not brought to the attention of the Board within ten days of the filing of the charges), as well as lacking factual merit.

B. THERE IS REASONABLE CAUSE FOR THE BOARD TO FIND THAT THE CARPENTERS AND DC 35 BOTH CLAIMED THE SAME WORK AND THAT AT LEAST ONE OF THESE UNIONS USED MEANS PROSCRIBED BY SECTION 8(b)(4)(D) TO FURTHER THEIR CLAIMS TO THE DISPUTED WORK

For the Board to resolve a jurisdictional dispute under Section 10(k), there must be “reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires finding that there are competing claims to the disputed work between rival groups of employees, and that a party has used proscribed means to enforce its claim to the work in dispute.” Service West I, 356 NLRB at 761, citing Carpenters Local 624 (T. Equipment Corp.), 322 NLRB 428, 429 (1996). This standard is easily met in the current matter.

Of note is that “to exercise its powers under § 10(k), the Board requires a lower standard of proof than the “preponderance of the evidence” standard of proof in a § 8(b)(4)(D) violation case. NLRB v. Plasters’ Union Local 79, 404 U.S. 116, 122 n. 10 (1971).

First, and as stated above, hearing testimony and exhibits make it clear that both the Carpenters and DC 35 claim the same work at the sites in question. DC 35 repeatedly has claimed that it should be given the work in dispute rather than having it assigned by the Employers to the Carpenters. This work dispute between locals of carpenters and glaziers is identical, at least with respect to the installation of demountable walls, to that faced and adjudicated recently by the Board in both Service West I and Service West II.

Next, there is “reasonable cause to believe that ... a party has used proscribed means to enforce its claim to that work.” More specifically, Carpenter’s Representative John Murphy has admitted repeatedly attempting to force or require the Employers to assign the disputed work to carpenters by means proscribed by Section 8(b)(4)(D) – i.e., through threats against both Colonial and NEFS of a job site action by the carpenters which he admitted could mean a picket line.

These repeated threats against the Employers by the Carpenter’s Representative Mr. Murphy, both individually and jointly, are clear and convincing evidence of proscribed conduct by the Carpenters, and certainly meet the “reasonable cause” standard necessary to invoke Section 10(k) jurisdiction. See Laborers International Union of North America, Local No. 6 (Anderson Interiors, Inc.), 353 NLRB No. 62, slip op. at 2 (2008) (in a 10(k) context, a union job action that has an objective of obtaining disputed work “is sufficient to bring the union’s conduct within the ambit of Section 8(b)(4)(D).”); accord Laborers’ Local 310, slip op. at 3 (a threat by a local’s business manager that the local’s members would picket and strike any project where the disputed work was assigned to another union is a “proscribed means of enforcing claims to disputed work” in violation of Section 8(b)(4)(D) and is sufficient to invoke Section 10(k) jurisdiction), citing Operating Engineers Local 150 (R&D Theil), 345 NLRB 1137, 1140 (2005).

C. DC 35 WAIVED ANY CLAIM THAT ALL OF THE PARTIES TO THIS DISPUTE HAVE AGREED UPON A METHOD FOR THE VOLUNTARY RESOLUTION OF JURISDICTIONAL DISPUTES AND, EVEN IF THIS CLAIM WERE NOT WAIVED, IT IS WITHOUT MERIT

Although DC 35 (but not any other party including the Carpenters) first claimed (at Day 2 of the hearing) that all parties had an agreed upon a method for the voluntary resolution of jurisdictional disputes, their claim clearly is both (i) barred as a matter of law under the Act and (ii) without factual merit.

First of all, DC 35’s claim that there is an agreed upon method for the voluntary resolution of jurisdictional disputes is barred (or waived) as a matter of law as untimely. In Section 10(k), Congress explicitly stated that the Board:

is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. (emphasis added)

Section 10(k)'s provision of a mandatory ten day submission period after the filing of a charge is unambiguous. No section of the Act gives the Board the power to extend or ignore this ten day statutory period.

As no such claim of an agreed upon method for voluntary adjustment was raised to the Board with respect to the current charges by DC 35, or by any other party, through the submission of "satisfactory evidence" to the Board within the ten day period after the filing of a charge, any such claim is barred (or waived) in the current matters as a matter of law.<sup>16/</sup>

Moreover, even if DC 35 had made such a timely submission to the Board, that claim still must be rejected as it lacks factual merit. To that end, Section 10(k) provides that for this matter to be resolved on the merits by the Board, the Board must find "that the parties have not agreed upon a method of voluntary adjustment of the dispute." See Laborers' Local 310, slip op at 3, citing Operating Engineers Local 150 (R&D Theil), 345 NLRB 1137, 1139 (2005). "[I]t is well established that to constitute an 'agreed upon method for the voluntary adjustment of the dispute' within the meaning of Section 10(k) the private adjustment method must be one which all parties to the dispute are bound." Operating Engineers Local 150 (Diamond Core Co.), 331 NLRB 1349, 1350 (2000) (emphasis added).

In the current matter, the Carpenters' collective bargaining agreement did not provide a binding procedure for the resolution of jurisdictional disputes with DC 35. Instead, that agreement merely provided that the employer must participate in "a tripartite arbitration with all

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<sup>16/</sup> As noted above, the charges in the current matter were filed with the Board on September 7 and 8, 2016. DC 35's claim that there might be an agreed upon procedure to resolve these disputes was raised for the first time to the Board over 80 days later (on November 28, 2016, at the start of Day 2 of the hearing) orally by DC 35's attorney.

the disputing parties” if the carpenters’ local (i.e., the “Union”) elects to “request” such an arbitration procedure to resolve a jurisdictional dispute:

In the event a jurisdictional dispute arises, the disputing unions shall request the other union . . . to send representatives to meet with reps of the Union and Employer to settle the dispute. If the above procedure . . . fails to resolve the problem, then the Employer, at the request of the Union, agrees to participate in a tripartite arbitration with all the disputing parties.

There was and is no agreed upon binding procedure for either of the Employers to use to resolve their current jurisdictional disputes with both the Carpenters and DC 35 other than seeking the assistance of the Board under Section 10(k) through the filing of Section 8(b)(4)(D) charges. See NLRB v. Plasterers’ Union Local 79, 404 U.S. 116, 124-137 (1971) (when the employer has not agreed to a single method for the voluntary adjudication of a Section 10(k) jurisdictional dispute, the Board must decide the matter – especially since “Congress had expressed a clear preference for Board decision as compared with compelled arbitration”).<sup>17/</sup>

II. THE BOARD SHOULD ISSUE A DETERMINATION UNDER SECTION 10(K) THAT THE CARPENTERS ARE ENTITLED TO PERFORM THE WORK IN DISPUTE

“Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors” namely the wording of collective bargaining agreements, past practice and employer preference, area and industry practice, relative skills and training, and economy and efficiency of operations. Laborers’ Local 310, slip op. at 3, citing NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting), 364 U.S. 573, 577-579 (1961); accord Service West I, 356 NLRB at 763-764. In so doing, the Board’s determination is “an act

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<sup>17/</sup> There is no merit to any claim by DC 35 that it has only been engaging in “work preservation.” As shown at the hearing, it is beyond dispute that DC 35 has been seeking to gain work that the Employers have previously and continuously given to the Carpenters. A union’s effort to expand work jurisdiction with a particular employer is an effort at work acquisition rather than work preservation. See Laborers International Union of North America, Local 860 (Ronyak Paving, Inc.), 360 NLRB at 239 and n. 6; see also Teamsters Local 20 (Midwest Terminals of Toledo International, Inc.), 359 NLRB 983, 984 (2013); Laborers’ Local 310, slip op. at 3. Accordingly, the Board’s resolution of the current dispute under Section 10(k) is proper. Id.

of judgment based on common sense and experience, reached by balancing the factors involved in a particular case.” Service West I, 356 NLRN at 763, citing Machinists Lodge 1743 (J.A. Jones Construction), 135 NLRB 1402, 1410-1411 (1962); accord Laborers’ Local 310, slip op. at 3.

A. THE WORDING OF COLLECTIVE BARGAINING AGREEMENTS

Both the Carpenters and DC 35 have work jurisdiction provisions in their collective bargaining agreements that arguably cover the disputed work.

Accordingly, this factor appears to be neutral in determining which workers should be awarded the disputed work.

B. EMPLOYER PREFERENCE AND PAST PRACTICE

Both Colonial and NEFS testified that they currently use, and have always used, carpenters for the disputed work and have a strong preference for continuing this practice.

More specifically, Mr. McKenna and Mr. Kosman testified that Colonial has had a consistent practice over the last 10 years of using carpenters for all of the disputed work on their projects, except that Colonial hires glaziers from the union hall to install raw glass on those occasions when there is a substantial amount of raw glass to install. (Vol. 2, 64, 114, 131-132, 140-141, 149-151, 164, 209) Mr. McKenna also testified that Colonial uses carpenters to install raw glass when there are only a few panels of unframed glass to install. (Vol. 2, 49) The fact that glaziers make up only about five percent of the hours worked by Colonial’s work force in 2016, and that NEFS has never hired glaziers, further demonstrates those companies’ strong practice and preference for using carpenters. (Vol. 2, 142; E. Exh. 5)

Mr. Houle testified that NEFS, which has been installing demountable partitions since the late 1980s, has a consistent practice of using carpenters for the disputed work, including

installing any glass that has metal affixed to it, and only subcontracts to DC 35 employers for the installation of raw, unclad glass. (Vol. 2, 224, 231, 233, Vol. 3 270, 279-281, 301-302, 304, 321-322, 324)

Colonial and NEFS' past practice and preference are consistent with the testimony and findings from the recent Service West I matter:

The Employer prefers that the work in dispute continue to be assigned to employees represented by the Carpenters in accord with a consistent past practice dating back to 1982. There is no evidence that the Employer has previously assigned the work in dispute to employees represented by Glaziers. We find that the factors of employee preference, current assignment, and past practice favor awarding the disputed work to employees represented by the Carpenters.

Service West I, 356 NLRB at 763, citing Sheet Metal Workers Local 19 (E.P. Donnelly, Inc.), 345 NLRB 960, 963 (2005).

Furthermore, it is NEFS' practice and preference to use carpenters for the installation of shower doors, as evidenced by Avalon 1, Avalon 2, and Seaport Parcels B & C.

Accordingly, this factor favors the assignment of the disputed work to carpenters.

#### C. AREA AND INDUSTRY PRACTICE

As discussed above, the evidence in this matter was clear that the industry practice in the current area (and indeed nationwide) is that the disputed work is exclusively, or at least overwhelmingly, performed by carpenters rather than by glaziers.

More specifically and in addition to the testimony from Colonial and NEFS about their practices, the testimony at the hearing was that demountable partitions with glass are generally installed by carpenters in Boston, as well as in other major US cities such as San Francisco, Chicago and Kansas City. (Vol. 2, 158)

In addition, Mr. Twomey of East Coast Installations testified that 50% percent of his company's work involves the installation of demountable partitions and that 80-90% of these

partitions are made of glass. (Vol. 3, 265) It has been East Coast's practice to use carpenters to install tracks, frames, studs, top tracks, bottom tracks and unitized glass that is iron, metal or aluminum clad using carpenters. (Vol. 3, 252-253) East Coast utilizes glaziers only on the installation of raw, uncut glass, and uses carpenters for all other demountable partition installation work including those with glass with metal attached to it. (Vol. 3, 265, 270, 279-281)

This is consistent with the testimony and findings from the recent Service West I matter:

Good testified that in his 13 years in the business, the disputed work had always been performed by employees represented by the Carpenters. Michael Vlaming, the Association's executive director, testified that all the members of the Association used employees represented by the Carpenters to perform the disputed work. He was unaware of any employer who used employees represented by the Glaziers to perform the disputed work. There is no evidence that any employer in the San Francisco Bay area has assigned work similar to that in dispute to employees represented by the Glaziers. Accordingly, we find that the factor of area practice favors an award of the disputed work to employees represented by the Carpenters.

Service West I, 356 NLRB at 763, citing Elevator Construction Local 2 (Kone, Inc.), 349 NLRB 1207, 1210 (2007).

Moreover, Cheviot Corporation, which is signatory to both the Carpenters and DC 35 has, for many years, installed shower doors with composite crews as was evidenced by the list of ten Cheviot Corporation shower door contracts, between 2006 and 2016, in Carpenters' Exhibit 3.

Accordingly, area and industry practice favor the assignment of the disputed work to carpenters.

D. RELATIVE SKILLS AND TRAINING

Evidence adduced at the hearing demonstrated that the carpenters used by Colonial and NEFS have necessary skills, training and experience for the installation of demountable partitions that glaziers lack.

More specifically, many of the manufacturers of demountable partitions that Colonial installs as part of the disputed work (e.g., Teknion, DIRTT, Steelcase and Haworth) require that all installers of their systems be certified or led by a certified individual. To that end, Colonial supervisors have been certified by the manufacturers contracting with Colonial following trainings at the manufacturers' factories, and they then have trained and supervised the Colonial carpenters performing the installations. (Vol. 2, 54-55, 65, 160-161) Therefore, even the carpenters that Colonial employs who lack a manufacturer's certification have received extensive on the job training from their supervisors in installing demountable partitions. In sharp contrast, Colonial knows of no glaziers that are certified by such a manufacturer. (Vol. 2, 57) Similarly, NEFS carpenters are trained and certified by the manufacturers supplying it with demountable partitions, Infinium and Carveart. (Vol. 2, 224, Vol. 3, 304)

DC 35 did not produce a single witness at the hearing who had knowledge of their members having such manufacturer's certification or training, or who had even done business with the furniture companies manufacturing the demountable walls installed by either Colonial or NEFS. (see, e.g., Vol. 5, 725, 728-729, 817, 820, 826, 840). In fact, most DC-35 witnesses fabricate their own panels rather than use the pre-made panels installed by Colonial and NEFS.

Finally, carpenters have training and experience in the carpentry skills needed for all aspects of installing demountable partitions or shower doors, while glaziers inherently lack such training and experience. (Vol. 3, 255, 280-281)

Accordingly, this factor favors the assignment of the disputed work to carpenters.

E. ECONOMY AND EFFICIENCY OF OPERATIONS

The testimony at the hearing proved that it is much more efficient, and therefore less expensive, for an employer to use a carpenter rather than a glazier for the disputed work, as a carpenter can shift between normal carpentry work on the job site and the disputed work based on the employer's needs, while glaziers are not trained or able to perform other tasks on a job site. Mr. Houle testified that it is this work flexibility that makes it indisputably much more economical and efficient to assign the disputed work to the Carpenters.<sup>18/</sup>

Colonial and NEFS' contracts usually cover more than just demountable partitions or shower doors. For example, at the 125 High Street job, the NEFS contract also covered drywall and window treatments, and at Avalon 2, their contract covered window treatments and medicine cabinets in addition to shower enclosures. (Vol. 2, 240. Vol. 3, 303) As work on a job site is often delayed due to the delivery of materials, preparatory work of other trades not being performed on time, or simply the unavailability of an elevator, using carpenters rather than glaziers to perform the disputed work allows the employer to move the workers to different tasks whenever there are delays or work is completed early. (Vol. 2, 153, Vol. 3, 255, 280-281, Vol. 5, 790-791)

NEFS, as well as East Coast Installations, also can and do have their carpenters install raw glass if that work is limited or intermittent. (Vol. 3, 289, 306) There was no testimony at the hearing that glaziers have a similarly broad skill flexibility. Indeed, Mr. Houle testified that

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<sup>18/</sup> See generally Laborers' Local 310, 361 NLRB No 37 slip op. at 5 (finding that economy and efficiency of operations favored using laborers over operating engineers in determining who should be hired to drive forklifts and skid steers on a job site, as the laborers "perform multiple tasks in addition to the disputed work and, therefore, can leave the forklift and skid steer when it is not in use to perform these other tasks, which are duties that Operating Engineers represented employees do not perform.")

“glaziers are set in a box, they only can do what their scope of work is, which is small.” (Vol. 3, 323)

Furthermore, Mr. Kosman also testified about the proven and inherent efficiency and economy in using carpenters to install these pre-manufactured demountable partitions. He noted that, DC 35 representatives at the JTB hearing which he attended demonstrated the efficiency of carpenters by providing the estimated time it would take glaziers to perform the work involved at the locations subject to their charges in contrast to the actual carpenter hours on these jobs for the disputed work.

	<u>DC 35 estimate of hours Using glaziers</u>	<u>Actual hours of Using carpenters</u>
Boston Public Library	(160 hours) 2 men for 10 days	64 hours ( 60% fewer hours)
200 Berkeley Street	(6000 Hours) 6 men 6 months	1900 hours
100 Federal Street	1200 hours	800 hours

(Jt. Exh. 6. Vol. 2, 156, 157)

Similarly, this Board found in the Service West I jurisdictional dispute:

Vignoles testified that it would slow the disputed work considerably “to bring in somebody just to do a piece of glass.” He testified that his team of employees represented by the Carpenters worked efficiently because they would “have worked together quite a long time . . . they can work sequentially . . . if you have to bring in a sub-contractor . . . you’re waiting for him to finish his part . . . It’s very inefficient. . . . Because we’d have to build the frame, then schedule in somebody else to put the glass in. We’d send our frame crew someplace else, and then they’d put the glass in, then we’d bring the frame crew back to trim out the job . . . we would lose a day, two days.” Good testified that superintendents from two of the general contractors with whom MG West frequently worked told him that it was essential the employees represented by the Carpenters rather than employees represented by the Glaziers perform the disputed work. This was so because employees represented by the Glaziers “were less adept at building the system than the Carpenters would be . . . the Glaziers moved extremely slow.” Vlaming testified that subcontracting to a separate group is never efficient, but rather “if all of your employees have been trained in this, and all of your employees are members of one union, it’s much more efficient to have them do all of the work . . . de-mountable floor-to-ceiling partition installation work . . . isn’t on every project. And that work isn’t the entirety of every job. And so to the extent that you can use them to do that work, and then

if you're still performing some open space cubicle work, you can roll them right over to that other work, that's very efficient and that's the way you'd want to run your business.”

Service West I, 356 NLRB at 763-764. On this basis, the Board then found that “the factor of economy and efficiency of operations favors awarding the disputed work to employees represented by the Carpenters.” Service West I, 356 NLRB at 764, citing Carpenters Local 62 (Homebase, Inc.), 311 NLRB 984, 986 (1993).

Finally, the Board found in Glaziers Local 513 that efficiency and economy is furthered when an employer does not have to engage in a “special hiring” of glaziers for “occasional” work but instead can use its “present employees ... [who] would be more economical ... [and,] are already available and experienced.” Glaziers Local 513, 159 NLRB at 1346.

For all of these reasons, this factor favors the assignment of the work to employees who are members of the Carpenters.

#### F. CONCLUSION

As every factor favors the assignment of the work to employees who are members of the Carpenters, or is neutral, the Board should award the work in contention to the Carpenters. Accord Service West I, 356 NLRB at 763-764 & Service West II 357 NLRB at 562 (awarding the disputed demountable wall work to the employees represented by the carpenters union instead of to employees represented by the glaziers union); Glaziers Local 513, 159 NLRB at 1345-1347 (awarding the disputed glass shower door assembly work to the employer's regular unionized employees instead of to employees represented by the glaziers union).

### III. THE SCOPE OF THE BOARD'S AWARD SHOULD COVER THE OVERLAPPING GEOGRAPHIC JURISDICTIONS OF THE CARPENTERS AND DC 35

As the jurisdictional disputes covered by the current matter are likely to recur, and as the Carpenters have shown a proclivity to violate Section 8(b)(4)(D) in order to try to force

employers to assign the disputed work to its members, under well-established Board precedent the Board should issue a broad area-wide award of the disputed work covering the geographic area where the jurisdiction of the Carpenters and DC 35 overlap.

The Board's two-part standard for issuing a broad award in a Section 10(k) matter is settled:

In determining the appropriateness of such an award, the Board requires evidence that (1) the disputed work has been a continuous source of controversy in the relevant geographic area and that similar disputes may recur; and (2) there is a proclivity by the offending union to engage in further proscribed conduct to obtain the disputed work.

International Union of Operating Engineers, Local 18 (Donley's Inc.), 360 NLRB at 909, citing Electrical Workers, Local 98 (Total Cabling Specialists), 337 NLRB 1275, 1277 (2002), and Bricklayers (Sesco, Inc.), 303 NLRB 401, 403 (1991). Both of these requirements for a broad order are met in the current matter.

First, in addition to DC 35's Joint Trade Board charges filed with respect to the job sites in the current dispute before the Board, DC 35 has filed many other charges with the Joint Trade Board against companies installing glass partitions in the Boston area. The list of such other charges includes the following:

Colonial Systems, Inc.

April 3, 2013 300 Binney Street, Cambridge Biogen  
July 16, 2015 101 Seaport Avenue, Boston, MA  
July 16, 2015 300 Mass. Avenue, Cambridge, MA  
July 16, 2015 300 Mass. Avenue, Taketa, Cambridge, MA  
Oct. 22, 2015 One Heritage Drive, Quincy MA  
Jan. 26, 2016 99 High Street, Boston MA  
Sept 27, 2016 75 Sydney Street, Cambridge, MA  
(DC 35 Exh. 25)

Boston Install Inc.

August 16, 2016 1 Financial Center, Boston, MA  
(E. Exh. 12 A.)

Johnson & Goglia Cont. Inc.

August 12, 2016 53 State Street, Boston, MA  
(E. Exh. 12F)

Interstate Office Partitions  
(list of jobs is in E. Exh. 13)

East Coast Installations  
August 23, 2016 30 Dalton Street, Boston, MA  
225 Franklin Street, Boston, MA  
(E. Exh. 14)

In addition, the Employers have learned that since the last hearing day, DC 35 has filed many new charges at the Joint Trade Board concerning the same types of disputed work at issue in the current matter, including additional charges against Colonial and Paint Systems.

Thus, the disputed work has been and is a continuous source of controversy in the relevant geographic area. Moreover, since DC 35 has not repudiated its intention to claim such work, it is reasonable to conclude from the evidence “that similar disputes may recur” in the absence of the Board issuing a broad order. See International Union of Operating Engineers, Local 18 (Donley’s Inc.), 360 NLRB at 909.

The evidence also demonstrates a proclivity by the Carpenters to engage in further conduct proscribed by Section 8(b)(4)(D) in order to support and advance their claim to the disputed work. To that end, it is undisputed that the Carpenters engaged in such wrongful conduct (e.g., threats of pickets or other job actions) at the job sites at issue in the current matter.

Under such circumstances of “widespread and persistent” misconduct, the Board has issued broad orders “even absent evidence of unlawful conduct subsequent to an extant 10(k)

award.” See, e.g., International Union of Operating Engineers, Local 18 (Donley’s Inc.), 360 NLRB at 910, citing Sheet Metal Workers, Local 19 (E. P. Donnelly), 345 NLRB 960, 965 (2005) and Electrical Workers Local 103 (Lucent Technologies), 333 NLRB 828, 831-832 (2001); accord Laborers’ Local 310, slip op at 6.

Respectfully submitted,

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Dated: January 13, 2017

## CERTIFICATE OF SERVICE

I, Geoffrey R. Bok, co-counsel for New England Finish Systems and Colonial Systems, Inc. in Case Nos. 01-CD-183789 and 01-CD-183838, certify that I have served a copy of the Post-Hearing Brief of New England Finish Systems and Colonial Systems, Inc. upon the following persons, by electronic mail, on the thirteenth day of January 2017, at the addresses listed below:

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