

**UNITED STATES OF AMERICA**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**REGION 01**

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In the Matter of: )

NEW ENGLAND REGIONAL )  
COUNCIL OF CARPENTERS, )  
LOCAL 33, )

Case No. 01-CD-183789

and )

NEW ENGLAND FINISH SYSTEMS, )  
INC., )

and )

INTERNATIONAL UNION OF )  
PAINTERS AND ALLIED TRADES, )  
DISTRICT COUNCIL 35. )

NEW ENGLAND REGIONAL )  
COUNCIL OF CARPENTERS, )  
LOCAL 33, )

Case No. 01-CD-183838

and )

COLONIAL SYSTEMS, INC., )

and )

INTERNATIONAL UNION OF )  
PAINTERS AND ALLIED TRADES, )  
DISTRICT COUNCIL 35. )

**INTERVENOR'S POST-HEARING BRIEF**

**I. INTRODUCTION**

This case arises out of the increased demand for glass as a feature in interior office renovations. Increasingly offices have been outfitted with glass walls, glass partitions and glass doors. Interior glass systems generally consist of aluminum tracks affixed to walls, ceilings and

floors together with glass panels that fit into aluminum tracks. Installation of those systems is claimed by both trades. A separate but related work assignment dispute concerns the installation of glass shower doors.

This is the Post-Hearing Brief of the International Union of Painters and Allied Trades, District Council 35 (herein referred to as “DC 35” and “Glaziers”). The Glaziers first submit that the Board should quash the Notice of Hearing<sup>1</sup> as the parties have agreed to a private method of adjusting the underlying work-assignment dispute and as such the dispute is not properly before the Board. Substantively, the Glaziers respectfully submit that the work in dispute is properly assigned to the Glaziers either under the factors used by the Board in National Labor Relations Act § 10(k) jurisdictional disputes or under the area practice standard contained in the Carpenter collective bargaining agreement.<sup>2</sup>

## **II. THE PARTIES**

There are two Union parties to this case and two employer parties to this case. The Union parties are the International Union of Painters and Allied Trades, District Council 35, the representative of various finishing trades including glaziers and glass workers.<sup>3</sup> IUPAT District Council 35 will be referred to herein as “District Council 35”, “DC 35” or “Glaziers”. New England Regional Council of Carpenters, Local 33, has geographic jurisdiction over Boston, Massachusetts. Local 33 will be referred to as “Local 33” or “Carpenters”. The parties stipulated that DC 35 and Local 33 are labor organizations within the meaning of the Act.

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<sup>1</sup> Two Notices issued in this case. The first dated September 28, 2016 was entitled Notice of Hearing. The second dated November 9, 2016 was entitled Notice Rescheduling Hearing and Clarifying Disputed Work. Both Notices should be quashed because the parties have agreed to an alternative dispute resolution procedure.

<sup>2</sup> Article II of the Carpenter contract provides that “[w]ork assignments shall be made by the Employer in accordance with present decisions and agreements of record and area practice”. Jt. Ex. 1 at 12. In the absence of decisions and agreements of record, area practice should control as the contractual standard for work assignments.

<sup>3</sup> Glass workers are metal fabricators who work in glass shops. Tr. 644. They fabricate metal frames by cutting extrusions to the size required and attaching anchoring clips to hold the frames together. Tr. 645. Glaziers work in the field installing the frames to the floor and ceiling with screw guns and drills and then glaze the frames. Tr. 646.

The two employers involved in this consolidated case are New England Finish Systems, LLC and Colonial Systems, Inc. New England Finish Systems, LLC will be referred to as “NEFS” and Colonial Systems, Inc. will be referred to as “Colonial”.

NEFS was organized as a corporation in 1988. DC 35 Ex. 5. That corporation merged with a drywall corporation in 1999. DC 35 Ex. 6. The corporation merged with an LLC of the same name effective January 1, 2007. DC 35 Ex. 7. NEFS operates out of offices located at One Delaware Drive in Salem, New Hampshire.

NEFS originally agreed to be signatory to the DC 35 contract in 1990. DC 35 Exs. 9 and 23. NEFS sent a letter attempting to repudiate that agreement in July of 2016 during the period of this dispute. DC 35 Ex. 10. A related company to NEFS is Paint Systems of New England, LLC. Both are owned and operated by John and Diane Marquis. DC 35 Exs. 8, 13, 14. A third related company, Specialty Services of New England, LLC<sup>4</sup> secures installation work and subcontracts it to NEFS. DC 35 Ex. 15.<sup>5</sup> Paint Systems, the sister company of NEFS regularly employs glaziers. Paint Systems has had a collective bargaining agreement with DC 35 since 2002. P-31; Tr. 1052.

Colonial is an office furniture installation company that has been signed with the Carpenters for 25 years. Tr. 140-41 and 1067. It is owned and operated by Gene Kosman and its manager is Matt McKenna both union carpenters. Colonial signed a collective bargaining agreement with DC 35 in 2008 just as the recession began to take hold. DC 35 Ex. 21. Other furniture installation companies followed suit. DC 35 Ex. 22. John Murphy, the Carpenter

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<sup>4</sup> Specialty Services was organized in 2013 as a Massachusetts LLC. Like Paint Systems and NEFS it is owned and operated by John Marquis. DC 35 Ex. 11.

<sup>5</sup> Ray Houle, an NEFS supervisor, identified himself in emails as both president and safety officer of both NEFS and Specialty Services. DC 35 Exs. 4, 24.

representative identified Colonial and Interstate Office Partitions as the two major contractors in the furniture installation portion of the industry. Tr. 416 (“two biggies”).

### **III. THE WORK IN DISPUTE**

The installation of interior glass and glass systems has historically and traditionally been the work of Glaziers. Glaziers are trained to do this work as part of their apprentice training and journeyman training programs. Glaziers have performed the installation of interior glass systems for many years.<sup>6</sup>

The installation of interior glass systems can either be performed by the construction crews that build the building or it can be performed by post-construction contractors (also referred to as “tenant fit-out” contractors) who work, not for the general contractor but for the owner, developer or the tenant. This case involves the latter type contractor.

Historically, finish contractors and furniture contractors have employed carpenters. They move furniture into office space, affix cabinets to walls and construct cubicles in offices under collective bargaining agreements with Carpenters. The appearance of glass partitions combined with favorable tax treatment of movable partitions (referred to as “demountable partitions”)<sup>7</sup> has seen an increase in the installation of interior glass systems by finish contractors and furniture contractors as architects have placed these glass systems in separate bid packages. Tenant fit-out contractors entered into collective bargaining agreements with the Glaziers some years ago. In the years since the recession ended (i.e., post 2012) the installation of interior glass systems has

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<sup>6</sup> “Store fronts” is another name for these glass systems. Shopping Malls contain glass store fronts. As each retail outlet separates itself from the common areas of the Mall with glass walls and doors while offering shoppers a look at its merchandise. Mr. Falter used the term ‘store front’ to describe either an interior glass partition or an exterior glass partition. Tr. 574. Mr. Houle attempted to distinguish store fronts from demountable systems as being “much heavier, permanently installed”. Tr. 1054. Mr. Kosman distinguished store fronts from demountable walls on the ground that store fronts are not intended to be moved. Tr. 1071. Tr. 62. To a glazier a glass demountable partition is either a glass wall or a storefront. Tr. 714-715. See Tr. 866 (glass interior storefront is a glass wall). No one disputes that store fronts and glass demountables share the basic components of aluminum and glass.

<sup>7</sup> See Tr. 62-64 and 912.

increasingly grown but the employment of glaziers by the contractors who install the systems has not. The work of installing interior glass systems by carpenters generated Glazier grievance. Similarly carpenters installing glass shower doors generated grievances.

#### **IV. PROCEDURAL BACKGROUND**

##### **A. The Grievances**

In July and August of 2016 glazier representatives pressed contractual grievances against NEFS and Colonial protesting that these companies had violated the job registration provisions, the pre-job conference provisions and the trade jurisdiction provisions of the DC 35 collective bargaining agreement. Jt. Exs. 3, 4. Under the DC 35 collective bargaining agreement grievances are processed through the Joint Trade Board (“JTB”), an arbitral panel consisting of representatives of both management and labor. JTB hearings were scheduled on the glazier grievances for September 13, 2016.

##### **B. The Threats**

Prior to the scheduled JTB hearings Mr. Murphy, the Carpenter representative informed the employer representatives that any change of assignment on interior glass systems would result in a job action. A few days later, realizing that the NEFS shower door installation on Parcels B & C was also the subject of a glazier grievance, Mr. Murphy repeated a threat over this job to Mr. Houle. The employers filed the Charges giving rise to this hearing.

Mr. Murphy conceded that he had threatened the employers with a job action. Tr. 444. Mr. Murphy denied discussing with Mr. McKenna from Colonial the fact that his threat would lead to a ULP Charge and to a resolution of the dispute. Tr. 446. Mr. Murphy did concede that he may have said that earlier. Tr. 447 (“I think I had already sent that message”).

In the summer of 2016, prior to the grievances referred to above, Glaziers preferred a grievance against NEFS on a glass shower door project known as Avalon II, a project on Nashua Street in Boston. The response of the Carpenters to this grievance was to threaten a job action in order to provide a predicate for a § 8(b)(4)(D) Charge. The Carpenters calculated that the Board's inclination to award work in accordance with contractor preference would provide a method by which they might secure the installation of glass shower doors. The first such threat produced a Charge in July 2016. Er. Ex. 8. The parties settled the Charge by agreeing to a composite crew for only the job in question. It was agreed by both unions that the settlement would have no precedential value. Tr. 959.

### **C. The ULP Charges**

Two unfair labor practice charges were filed in early September 2016 by Colonial and NEFS respectively. The first, filed by NEFS on September 7, 2016 specified 125 High Street as the project where the dispute occurred. Board Ex. 1 (a). The charge appears to have been filed on the same day the threat was made. *Id* at ¶ 2. NEFS charged the Carpenters with violating § 8(b)(4)(D) for having issued threats “with the object of forcing or requiring [New England Finish Systems] to assign particular work to employees in a particular labor organization rather than to employees in another labor organization.” *Id*.

Colonial Systems then filed an identical unfair labor practice charge against the Carpenters the next day, alleging the same violation of § 8(b)(4)(D). Board. Ex. 1(c). Colonial's charge specified the company's location as the “plant involved”. *Id* at ¶ 2. See Jt. Ex. 4 (Colonial address Ballardvale St. in Wilmington).

#### **D. The Notices of Hearing**

The original notice of hearing was issued on September 28<sup>th</sup>. Board Ex. 1 (e). It separately addressed the work in dispute at the NEFS projects (i.e., 125 High Street and Parcels B & C in the Seaport District). The 125 High Street work was described as “work relating to the installation of aluminum track to ceiling and floor; glass doors; and glass hardware and rollers at the project on floors 5 to 9...” The Parcel B & C work was described as “work relating to the installation of glass shower doors at the project . . .”.

The work involved in five separate Colonial projects was described as “the installation of glass/glazing, aluminum frames, and or glass doors”.<sup>8</sup>

On the first day of hearing on October 11, 2016 a question was raised regarding clarifying the work in dispute as set forth in the Notice.<sup>9</sup> The Carpenters sought to include the phrase “demountable partitions” as part of the work in dispute.<sup>10</sup> The Hearing Officer was unable to amend the notice of hearing and as a consequence the October 11<sup>th</sup> hearing was postponed. Tr. 16.

A revised notice, Board Ex. 3(a), described the work at the five Colonial projects and at NEFS’ 125 High Street project as “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...”. The revised notice issued on November 9<sup>th</sup>. Id.

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<sup>8</sup> The five Colonial projects were identified as 1) One Federal Street, 8<sup>th</sup> Floor, Boston; 2) 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. The projects do not appear to have been identified in the charges filed by Colonial. Instead, the Colonial projects appear to be taken from the grievances filed by DC 35. Jt. Ex. 4.

<sup>9</sup> See Tr. 8 (the clarification issue is inaccurately attributed to Mr. Kelly). The question was raised by Mr. Krakow the attorney for the Carpenters.

<sup>10</sup> The closest reference to the work in dispute contained in the Carpenters’ collective bargaining agreement is a reference to “demountable partitions” in the Furniture Addendum. Jt. Ex. 1 at 52. Apart from that reference precious little language in the Carpenters’ jurisdiction claims support their claim to this work.

### **E. The Hearing**

As just addressed, the hearing commenced on October 11 but was postponed to permit adjudication of the Carpenters' claim to install glass demountable partitions. Evidence was received over the course of five (5) days, on November 28, December 1, December 8, December 9, and December 12, 2016. The parties called a total of twenty-three witnesses and introduced fifty exhibits, including six joint exhibits. NLRB attorney Gene M. Switzer served as Hearing Officer for the hearing. NLRB attorney Colleen Fleming served on the first day.

Prior to receiving evidence on November 11, DC 35 withdrew from the Stipulation to the extent that it provided that there was no voluntary method of adjusting the dispute. See Board Ex. 2 at ¶ 9. DC 35 observed that Article II of the Carpenter collective bargaining agreement provided a tripartite method of arbitration. Jt. Ex. 1. The contractual provision was binding on the Carpenters and the employers, NEFS and Colonial. DC 35 voluntarily agreed to participate in that process on November 28. Tr. 25-26. The Carpenters and the Employers both disagreed that the dispute should be heard under the collective bargaining agreement. Tr. 27-30. The question of whether the combination of DC 35's voluntary agreement to participate in the tripartite proceeding contained in the Carpenters' agreement was reserved by the Hearing Officer for argument. Tr. 29

The Employers called Matthew McKenna, Gene Kosman, Ray Houle, and William Scalzi as their witnesses. Mr. McKenna, Colonial's Vice President of Operations, and Mr. Kosman, Colonial's founder and owner testified concerning Colonial's work, the threats that led to the charges and the jobsites on which the work was performed. Tr. 36 – 139; Tr. 139 – 212; Tr. 1063 – 1118.

Mr. Houle, President of New England Finish Systems,<sup>11</sup> testified regarding NEFS' work at Parcel B & C and 125 High Street. Tr. 212 – 244; Tr. 293 – 415; Tr. 1053 – 1063. Mr. Scalzi, Carpenter Foreman at NEFS and field supervisor for Specialty Services, testified regarding the work in dispute at the Avalon II jobsite. Tr. 979 – 1004. The Employers introduced a total of fourteen exhibits.

The Carpenters called Miles Twomey, Al Peciario, and John Murphy as their witnesses. Tr. 248; Tr. 483; Tr. 1046. Mr. Twomey, a carpenter at East Coast Office Installation Group and member of the Carpenters Local 33, testified as to the type of glass he believed was within the Carpenters' jurisdiction and he had performed before. Tr. 250 – 293.<sup>12</sup> Mr. Peciario, Director of Contract Relations for the Carpenters, and Mr. Murphy, Business Representative for the Carpenters, testified as to the Carpenters' involvement in the work in dispute, their contracts, and the threats that led to the charges. Tr. 485 - 465; Tr. 415 – 479; Tr. 1118 – 1135. The Carpenters introduced a total of five exhibits.

The Glaziers called as witnesses Union agents Paul Canning and Joseph Itri, Apprentice Director Tom Falter, ten (10) glaziers (Dennis Itri, Michael Dallzell, James Burke, Matthew Moore, Jay Green, Michael Stone, Dean Curtis, Richard Mauro, Thomas Daly, and John Surprenant) and two (2) local building trade officials: Shawn Nehiley, Iron Workers Local 7 business agent and Robert Butler, Sheet Metal Workers, Local 17 business manager.

Mr. Canning, Director of Servicing for the Glaziers, testified as to the work in the Glaziers' jurisdiction and the nature of the work in dispute. Tr. 900 – 979; Tr. 1004 – 1041; Tr.

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<sup>11</sup> Mr. Houle's emails also represented that he was President and Safety Officer of Specialty Services as well as NEFS. See DC 35 Exs. 4 and 24.

<sup>12</sup> Mr. Twomey and the other Carpenter witnesses conceded to the Glaziers only the installation of a product they referred to as "raw glass". By this they meant a piece of unadorned glass, glass with no pre-glazed metal framing attached to it. Apart from the bare claim to the installation of pre-glazed glass elements there appears no principled reason for the distinction the Carpenters seek to draw.

1135 – 1146. Mr. Itri, Business Representative for the Glaziers, similarly testified as to the work the Glaziers have historically done as part of their jurisdiction. Tr. 643 – 699. Mr. Falter testified as to the training the Glaziers provide their members at the Finishing Trades Institute of New England. Tr. 565 – 643. Mr. Dennis Itri, Mr. Dallzell, and Mr. Burke, all Glaziers and members of the union, testified as to the work they do under the Glaziers’ CBA. Tr. 874 – 885; Tr. 885 – 900; Tr. 835 – 841. Mr. Moore and Mr. Green, who were subpoenaed to the hearing, testified as to their work as Paint Systems’ employees. Tr. 778 – 819; Tr. 852 – 874. The remaining witnesses testified to work the Glaziers historically and traditionally have performed on job sites, so as to establish the area practice. Tr. 706 – 718; Tr. 718 – 728; Tr. 728 – 742; Tr. 742 – 755; Tr. 755 – 767; Tr. 767 – 778; Tr. 819 – 835. The Glaziers introduced a total of twenty-five exhibits.

## **V. STATEMENT OF MATERIAL FACTS**

### **A. Background**

#### **1. Area and Past Practice of Glaziers**

The evidence produced at the hearing was overwhelming that the installation of interior glass systems and glass shower doors and shower enclosures is, and has been, the work of the Glaziers.

Demers Glass has been in business since 1935. Mr. Stone, President of the company testified that since 1982 the company has been installing interior glass walls composed of aluminum and glass with Glaziers. Demers has a collective bargaining agreement with DC 35 but does not have a collective bargaining agreement with any other trade. Tr. 707. Demers primarily works outside of Boston but Mr. Stone testified to a glass demountable partition job it performed in Boston in January of 2016. Tr. 710-711. One Demers customer employs

Carpenters. Tr. 713. Demers installed interior glass walls for that customer without any protest from the Carpenter steward. Tr. 713-714.

Custom Glass and Aluminum also installs interior glass walls and partitions. Custom also has a collective bargaining agreement with DC 35 but not with any other trade. Custom installs pre-manufactured glass partitions as well as glass wall systems that it fabricates in its shop. Tr. 720. Custom has had the experience of value engineering a job after a manufactured system had been specified, saving the end user by fabricating a similar system in Custom's shop. Tr. 722. Mr. Curtis, Custom's field supervisor, first noticed Carpenters installing glass systems nine or ten years ago. Custom chooses not to purchase manufactured products and install them. Instead it fabricates systems either in the field or in the shop and installs those systems. Tr. 726.

Richard Mauro works for Metro Glass, formerly Tower Glass. Metro has collective bargaining agreements with DC 35, Iron Workers and Carpenters. Tr. 729. Metro has a fabrication shop. *Id.* Metro installs interior glass with aluminum channels and assigns the work to Glaziers. Tr. 730. Glaziers also install shower doors. Tr. 731. Mr. Mauro estimated that it was approximately five or six years ago that Carpenters first started claiming the work. *Id.* Apart from a Carpenter steward no Carpenter agent or official has challenged Metro's interior glass assignment to glaziers. Tr. 732. Like Custom Glass, Metro does not pursue the installation of completely manufactured glass partition systems. Tr. 734. Metro did 300 or 400 shower door enclosures in the Millennium Place project in Chinatown and 303 Third Street in Cambridge. Tr. 738-39.

Mr. Nehiley, Iron Worker Business Agent,<sup>13</sup> testified that in his 29 years as an Iron Worker the installation of glass walls and glass partitions has always been the work of the

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<sup>13</sup> Mr. Nehily was business agent at the time of the hearing but became Local 7 Business Manager on January 1, 2017.

Glaziers. Tr. 742-743. Robert Butler, Business Manager for Local 17 Sheet Metal Workers similarly testified that the installation of aluminum tracks in the ceiling and floor was the work of the Glazier. Tr. 758-759.

Oasis Shower Doors specializes in the installation of shower doors. Tr. 768. The company has been in business for thirty years. The current owner has owned it for fifteen years. *Id.* Oasis bids for commercial shower door installations. Oasis bid on the two Avalon Bay projects. Tr. 770. NEFS underbid Oasis. Tr. 771.<sup>14</sup> Oasis bid Parcel B & C but again NEFS was the successful bidder, not Oasis. Shower door installations generally consist of glass, aluminum and brass. Fabrication is done either in the field or in the shop. Tr. 772-773. Oasis assigns this work to glaziers and always has.

Michael Dallzell has been a Glazier since 1973. He has been employed by Coastal Glass and Aluminum for the past seventeen years. Tr. 885. 90% of Coastal's work is tenant fit up. Tr. 886. Coastal does interior glass installations exclusively with glaziers. Tr. 888. Coastal has also done shower door jobs, also with glaziers. Tr. 890. The systems installed by Coastal are just as demountable as the systems installed by Colonial. Tr. 894.

## **2. Area and Past Practice of Carpenters**

The evidence of Carpenter contractors performing interior glass work begins in late 2003 or 2004. A DC 35 contractor, Salem Glass, was doing interior glass work at a job at 131 Dartmouth Street in Boston. Salem Glass employees notified the Glazier Agent, Joe Itri, they were installing aluminum tracks. Mr. Itri protested in a meeting among Glazier representatives and Carpenter representatives. Tr. 655. The Glaziers claimed the work and the Carpenters defended saying they had received the assignment. No resolution of the dispute was achieved

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<sup>14</sup> NEFS lost nearly \$220,000.00 in its first foray into the installation of shower doors. See Er. Ex. 11 (loss of \$157,190.00 on Avalon I and \$62,175.99 on Avalon II).

and a second meeting was convened with representatives of the general contractor Structuretone. Structuretone was signatory with DC 35 at the time. Tr. 657.

Mr. Murphy recalls it as one of the first glass office front jobs in the city. According to Mr. Murphy the dispute was over not the installation of the metal tracks but the installation of the glass. He acknowledged that glass installation was the work of the Glazier but pre-glazed panels (i.e., panels that came to the jobsite framed were, according to Mr. Murphy, going to be the work of the Carpenter). Tr. 422.

Within a few years of the Dartmouth Street project more and more interior offices were installing glass partitions. Contractors that the Carpenters refer to as furniture contractors began to bid this work as part of the furniture installation package. Recognizing that there was a substantial amount of glass involved the furniture contractors signed contracts with DC 35. By 2008 when the recession struck a number of Carpenter contractors including Colonial Systems had signed contracts with DC 35. Thus, it wasn't until after the recession ended and high rise construction resumed that the jurisdictional question became a serious bone of contention.

### **3. The Factual Dispute over the Work**

Under the Carpenters' view Glaziers should only touch something called "raw glass". Tr. 253. (Testimony of Myles Twomey). East Coast Office Installation is a furniture contractor. East Coast has contracts with both the Carpenters and the Glaziers. Tr. 253-254. East Coast installs glass demountable partitions with a composite crew of Glaziers and Carpenters. Tr. 252. East Coast has been signed with the Glaziers since 2010. Tr. 261. DC 35 Ex. 2. Mr. Twomey refers to a demountable partition as a floor to ceiling glass wall with an aluminum track on the ceiling and aluminum on the floor. Whether the glass wall can be taken down or not determines

whether it's demountable. Tr. 264. 50% of East Coast work is demountable partitions and 80% or 90% of the demountable partitions are glass. Tr. 265.

Classically interior glass walls were assembled from aluminum extrusions and glass and occasionally rubber gaskets. Tr. 903. The elements were supplied to a glass house and the materials were fabricated by the glass workers. Demountable partitions are treated as personal property for tax purposes permitting the end user a faster depreciation schedule than real property. Tr. 912.

Glaziers do not refer to glass as "raw glass". Tr. 915. According to Mr. Canning the reason you don't see raw glass in the collective bargaining agreement is "because nobody used that term other than these guys" (i.e., the other side). Tr. 915. Float glass is the closest thing to raw glass. Float glass is glass prior to getting tempered. Tr. 919. Tempered glass is the same as safety glass. Tr. 920. A glazing system could be a glass wall or a half wall, it's made up of aluminum and glass. Tr. 917-918.

A store front is either an interior or exterior glazing system. An exterior store front would consist of one inch thermal pane glass that keeps the cold out and the warmth in. Tr. 918. Interior store front systems are more likely quarter inch glass. Tr. 919.

#### **4. The Furniture Contractors Sign Agreements with DC 35**

Colonial Systems signed with DC 35 in 2008. Mr. Kosman, Colonial's President came into Mr. Canning's office and discussed that Colonial "was transforming into a real glazing company" as demand for glass walls was increasing. Tr. 924-25. Mr. Kosman needed people to be able to install the glass walls. Mr. Canning made clear that his trade would not seek "any of your office furniture". Tr. 925. Mr. Kosman's wife signed the collective bargaining agreement

on March 25, 2008. Tr. 927. Mr. Kosman and Mr. Canning had a thorough discussion of jurisdiction at the time.

The other “biggie” in the furniture portion of the industry, Interstate Office Installations, signed with DC 35 in March of the following year. DC 35 Ex. 22 (MOU with IOP dated March 3, 2009).

In 2010 Michael Camuso from East Coast Office Installations called and said his company was moving in the same direction as the other companies and was starting to get interior glass walls. Tr. 936. Like he had done with Mr. Kosman, Mr. Canning went over the Glaziers’ jurisdiction with Mr. Camuso. Tr. 936.

NEFS had previously signed a DC 35 contract in 1990. Tr. 939. DC 35 Ex. 23. During the pendency of the Avalon II dispute in July 2016 NEFS claimed to repudiate that agreement. DC 35 Ex. 10.

## **5. The Glass Partition Projects**

On August 24, 2016 the Employers were summoned to a DC 35 Joint Trade Board meeting scheduled for September 13, 2016. Jt. Exs. 3 and 4. Colonial appeared before the JTB. NEFS did not. The JTB issued its decisions on September 21, 2016. Jt. Exs. 5 and 6.

Colonial failed to register jobs and failed to hold pre-job conferences on four (4) glass partition projects: 1 Memorial Drive, Cambridge, Boston Public Library, 1 Federal Street, Boston and 200 Berkeley Street, Boston. Joint Ex. 6. Job registration, under the Glaziers agreement,<sup>15</sup> is a method of putting the Glaziers on notice that glazier work is being performed. In Mr. Canning’s words it “keeps everyone honest”. Tr. 921. The problem of contractors not registering jobs is that rival unions (like the Carpenters here) can perform another trade’s work

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<sup>15</sup> See Jt. Ex. 2 at 41-2 (Article XVIII §§ 1 and 3).

without the primary trade even knowing about it. Later the rival union will submit evidence that it has done many such jobs in defense of its claim to the work. See Carp. Exs. 1-3.<sup>16</sup>

The work involved in those projects included aluminum framed glass store fronts material (1 Memorial Drive), aluminum frames and glass partitions (Boston Public Library and 1 Federal Street) and floor-to-ceiling glass partitions and glass doorways (200 Berkeley Street) . Jt. Ex. 6. The JTB found Colonial's work assignments to have violated the trade jurisdiction of the Glaziers as specified in the DC 35 collective bargaining agreement. Jt. Ex. 6.

Each of the Colonial projects that were subject to the DC 35 grievances were completed before the September 7<sup>th</sup> Murphy threats and before the September 13 JTB. Tr. 70, 124.<sup>17</sup> Only the Partners' Health project was ongoing in September.

Similarly NEFS failed to register a job at 125 High Street, Boston, Massachusetts or hold a pre-job conference. Jt. Ex. 5. NEFS assigned carpenters to install aluminum frames and attach frames to glass doors at the job site. Id. The JTB found NEFS's work assignments to have violated the trade jurisdiction of the Glaziers as specified in the DC 35 collective bargaining agreement. Jt. Ex. 5.

## **6. The Shower Door Project – Parcel B & C.**

The attempted acquisition of the work of installing the glass shower doors, bathroom mirrors and related fixtures demonstrates how the Carpenters have sought to secure a portion of an assignment and convert that portion into a claim to the work. The record demonstrates only

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<sup>16</sup> Testimony was received to the effect that both East Coast and Cheviot perform disputed work with "composite crews". The problem of acquiring another trade's work is compounded by a contractor who employs different trades but who intermingles the trades through composite crews. See Carp. Ex. 3 and Tr. 430-31 (Cheviot installs glass shower doors with composite crews).

<sup>17</sup> This circumstance raises the question of why the NLRB should address jurisdictional disputes that are not current. If § 8(b)(4)(D) is not to be converted to a work acquisition tool, the § 10(k) procedure should be reserved for active disputes.

three examples of NEFS installing glass shower doors. The first occurred on an Avalon Bay<sup>18</sup> residential high rise building on Stuart Street in Boston (“Avalon I”). The second occurred on another Avalon Bay high rise residential building located on Nashua Street in Boston (“Avalon II”). The third and final jobsite, Parcels B & C in the Seaport District of Boston, was the site of disputed work in this case.

**a) Avalon I**

The Avalon I shower door dispute arose in March of 2015. Mr. Houle (President of NEFS) had previously spoken with Mr. Canning (DC 35’s Glazier representative) about creating a glass division within NEFS. Mr. Canning learned that NEFS was performing shower door and mirror installation on the Stuart Street project. Tr. 947. Mr. Canning called Mr. Houle and asked him who was performing the work. Mr. Houle indicated that carpenters were doing the work. *Id.* Mr. Canning asked him to cease and desist all such work, pointing out the job registration and pre-job conference provisions of the collective bargaining agreement.<sup>19</sup>

By the time representatives of the carpenters, DC 35 and NEFS met on the jobsite to discuss jurisdiction the job had been 50% or 60% completed. The parties then reached an agreement that the work of installing the glass mirrors and glass shower doors would be completed on a composite crew basis. Avalon I contained approximately 300 glass mirror and shower door enclosures. Tr. 227. Mr. Murphy acknowledged both the claim of the glaziers and the resolution on a composite crew basis. Tr. 435. A subsidiary resolution of the Avalon I project was a meeting between the Business Manager of DC 35 and the Business Manager of the New England Regional Council of Carpenters. Tr. 1036. The meeting occurred but no resolution was achieved. Tr. 1037. Avalon I was the first shower door installation ever

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<sup>18</sup> Avalon Bay is a developer of residential buildings and towers. Tr. 229.

<sup>19</sup> See Jt. Ex. 2 at 41-2 (Article XVIII §§ 1 and 3).

undertaken by NEFS. Tr. 234 (NEFS had not installed shower doors previously). NEFS bid \$213,000 for the contract but incurred \$370,000 in costs resulting in a comparatively significant loss of \$157,000. Er. Ex. 11.

**b) Avalon II**

Avalon II was a similar sized job located on Nashua Street in Boston. NEFS received the contract from its sister company Specialty Services who, according to Mr. Houle, also subcontracted to Paint Systems. Tr. 234. Bill Scalzi is a carpenter foreman for NEFS who worked as a field supervisor for Specialty Services for eleven months. Tr. 979-980. He acted as a “go between” between Specialty Services and NEFS and Paint Systems. TR. 980. Avalon II was a project for which Specialty had contracted to install multiple items including shower doors and bathroom mirrors. Tr. 981.

Following the Avalon I dispute and prior to the Avalon II job, Mr. Canning and Mr. Scalzi met and discussed the installation of the shower doors. Mr. Canning was adamant that the shower door work was the work of the glazier. Mr. Scalzi agreed and assigned the work to Glazier Matthew Moore and Dawn Cook, an apprentice. Tr. 953-54. Mr. Moore and Ms. Cook worked for five or six weeks installing shower doors and mirrors. Tr. 983. Mr. Moore noticed in the first week of June that the shower doors in the second shipment were “much smaller” than those in the first shipment. Tr. 789-790. As a result of a manufacturer’s error, Tr. 984, the owner, Avalon Bay required the shower doors to be removed. For that reason Mr. Scalzi “put two carpenters on to assist with the removal”. Mr. Canning, the DC 35 representative, protested and filed a grievance with the Joint Trade Board. Tr. 956. Both the grievance and the NEFS ULP charge over the Avalon II job were withdrawn as part of a non-precedential settlement.

Glazier Matthew Moore has twelve years experience installing shower doors, including five and a half years working for Oasis Shower Door, a major shower door installer. Mr. Moore worked on Avalon II, the Nashua Street job, from May, 2016 through the date of the hearing in December. Tr.779-80 (“I’m still currently there as well”)<sup>20</sup>. Mr. Moore and Ms. Cook installed seventy shower doors (as well as mirrors) in May until he noticed the size discrepancy and notified Scalzi. After the 4<sup>th</sup> of July weekend Mr. Moore and Ms. Cook and two carpenters began removing the seventy improperly sized doors. When the correct shower doors arrived a month later Mr. Scalzi assigned the work to a composite crew of glaziers and carpenters. Tr. 988. Mr. Scalzi was unaware of the contractual relationship, if any, between Specialty Services and NEFS or Paint Systems. Tr. 990 (“My job is really just to install the product I’m not into the contracts”).

Mr. Moore described in detail the installation of the Avalon II shower doors in response to questions from the hearing officer. Tr. 796-799.

**c) Parcel B & C**

Mr. Moore<sup>21</sup> also testified regarding the shower door installation process at Parcel B & C in response to questions from the Hearing Officer. Tr. 800 (“a more complicated process” than Avalon II); 804-808.

Mr. Houle notified both Mr. Murphy from the carpenters and Mr. Canning from the glaziers regarding the fact that NEFS had obtained the Parcel B & C job in the Seaport District. Mr. Houle had a separate conversation with Mr. Murphy from the conversation concerning 125 High Street. Tr. 312. The Parcel B & C job was between three hundred and four hundred

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<sup>20</sup> Even though Avalon II, like Parcel B & C, was an NEFS job, Mr. Moore, a glazier and nominally an employee of Paint Systems was the foreman in charge of shower doors.

<sup>21</sup> Mr. Moore is the foreman on the Parcel B & C project. At the time of the hearing that job had just begun. Tr. 793.

shower installations. Tr. 314. DC 35's attorney responded to Mr. Houle that DC 35 refused to compromise the shower door assignment on Parcels B & C. Er. Ex. 10; Tr. 315. Mr. Murphy's response, on behalf of the carpenters, was that if shower doors were installed exclusively by glaziers there would be a job action. Tr. 320. Having acquired a modest claim to shower door work on the two Avalon jobs through composite crews, the Carpenter was completely content with a composite crew. Tr. 314 (Mr. Murphy "was fine with a composite crew, no problem"). Mr. Houle assumed that Parcel B & C would go that way as well. Tr. 312.

## **VI. ARGUMENT**

### **A. The Board should quash the Notice of Hearing as the parties have agreed to a private method of adjusting the underlying work-assignment dispute.**

This dispute is not properly before the Board as the parties have agreed to a private method of adjusting the underlying work-assignment dispute, and as such the Board should quash the Notice of Hearing. The Board has held it will quash a notice of hearing if it has satisfactory evidence that the parties have agreed to a private method of adjusting the underlying work-assignment dispute. *Seafarers, Atlantic, Gulf, Lakes & Inland Waters District (Delta Steamship Lines, Inc.)*, 172 NLRB 694 (1968). This furthers the policy in which § 10(k) "not only tolerates but actively encourages voluntary settlements of work assignment controversies between unions." *Carey v. Westinghouse Elec. Corp.*, 375 U.S. 261, 266 (1964).

In the present case, all parties to the proceeding have agreed to a voluntary method for the resolution of jurisdictional disputes. The Carpenters' Collective Bargaining Agreement ("the Carpenters' CBA"), in Article II, contains a clause for tripartite arbitration to settle jurisdictional disputes:

"In the event a jurisdictional dispute arises, the disputing unions shall request the other union or unions involved to send representatives to meet with representatives of the

[Carpenters] Union and Employer to settle the dispute. If the above procedure or any other mutually agreed upon procedure fails to resolve the problem, then the Employer, at the request of the [Carpenters] Union, agrees to participate in a tripartite arbitration with all the disputing parties.” Joint Ex. 1, p. 12.

The Carpenters and the Employers are, of course, signatory to the Carpenters’ CBA and so bound to it. See generally Joint Ex. 1. The Glaziers have furthermore voluntarily agreed to the above procedures. Tr. Vol. 2 7:15-18 (“District Council 35 is willing to participate in an Article II Jurisdictional Dispute Procedure under [the Carpenters’ CBA] involving the three parties to this dispute”). Thus, all parties to the dispute have agreed to participate in the tripartite arbitration, the dispute is not properly before the Board, and the Board should quash the Notice of Hearing.

While it is true, of course, that the Glaziers are not signatory to the Carpenters’ CBA, this case differs significantly from previous Board cases in which one party is not signatory to the agreement that lays out the voluntary method of adjustment. The Board has generally held that an agreement between one employer and one union to submit a jurisdictional dispute to arbitration is not a voluntary method of adjustment for the second union to the dispute that will oust the Board of § 10(k) jurisdiction. See *Iron Workers Local 197 (Del Guidice Enterprises)*, 291 NLRB 1 (1988). Critically, however, the Board reached such decisions because the cases involved a union attempting to bring a second, *unwilling* union into arbitration under the first union’s own collective bargaining agreement.

For example, in *Iron Workers Local 197 (Del Guidice Enterprises)*, the Iron Workers’ union attempted to compel the Mason Tenders’ union with whom they had a jurisdictional dispute to arbitration under a provision in the Iron Workers’ CBA with the employer. *Id.* The Board rejected the argument because the Mason Tenders were neither signatory to the iron

workers' agreement nor expressed any interest in going to arbitration. *Id.* Similarly, in *Operating Eng'rs Local 3 (Hawaiian Dredging & Const. Co.)*, the local Iron Workers' union attempted to compel the Operating Engineers' union with whom they were in a dispute to arbitration under a provision in the Iron Workers' CBA with the employer. *Operating Eng'rs Local 3 (Hawaiian Dredging & Constr. Co.)*, 297 NLRB 953 (1990). The Board again rejected the argument as the Operating Engineers were not signatory to the Iron Workers' CBA nor were they willing to go to arbitration under it. *Id.* Finally, in *Plumbers Local 393 (Therma Corp.)*, the Laborers' union attempted to compel the Plumbers' union with whom they had a dispute to arbitration under a provision in the Laborers' CBA with the employer. *Plumbers Local 393 (Therma Corp.)*, 303 NLRB 678 (1991). Again, the Board rejected the argument as the Plumbers were neither signatory to the Laborers' CBA nor willing to go to arbitration. *Id.*

The common thread to the previous cases is that one union was attempting to hold the other union in the dispute to an agreement the other union was not signatory to. The present case presents the opposite situation: the Glaziers are attempting to hold the Carpenters and the Employers to an agreement they *are* signatory to. *See* Joint Ex. 1. The case is thus distinguishable from the case precedent, and it is consistent with the Board's prior precedent to here hold the Carpenters and the Employers to be bound to the Carpenters' CBA and compel the parties to arbitration. Doing so would further the policy goals behind § 10(k), which, as the Supreme Court has expressly stated, "actively encourages" arbitration as a dispute resolution mechanism to jurisdictional disputes. *Carey v. Westinghouse Elec. Corp.*, 375 U.S. 261, 266 (1964).

The Carpenters argue that the language in Article II of the Carpenters' CBA only applies to unions that have the exact same language in their own CBA. Tr. Vol. 2 10:20-24. For

example, they cite the local Laborers' CBA, which has very similar language to the Carpenters' CBA.<sup>22</sup> Tr. Vol. 2 10:25-11:5. This argument fails. The Office of the General Counsel of the National Labor Relations Board has opined that a situation such as this qualifies as a voluntary method of adjustment agreed upon by all the parties. *See* NLRB Gen. Counsel Memo. GC 73-82, *Authorization of Regional Directors to Process Without Clearance Section 8(b)(4)(D) Cases and Related Section 10(l) Petitions- Guide for Processing* (Dec. 3, 1973), at 10; *see also How to Take a Case Before the NLRB*, Garren, et al, at 19-13 (2016).

This Board has anticipated and provided direction on the very fact situation presented in the instant case, when one union (here, the Glaziers) simply agrees to be bound by the grievance procedures contained in the contract that the Employers (Colonial and NEFS) have with the other disputing union (here, the Carpenters). As early as 1973, when the unions involved do agree to participate in grievance-arbitration procedures under a particular contract between the employer and one of the unions, such an *ad hoc* procedure qualifies as a voluntary method of adjustment agreed upon by all the parties. *See* NLRB Gen. Counsel Memo. GC 73-82, *supra*.

Again, under the Carpenters' CBA, the Carpenters and the Employers have agreed to the tripartite arbitration, and the Glaziers willingly agree to that process as well. Unlike the reported decisions above in which the 'other union' has not agreed to the grievance-arbitration procedures in the CBA between the employer and the union, this case presents the exact type of *ad hoc* scenario where there is an agreed-to voluntary method to adjust this jurisdictional dispute. The Glaziers agree to submit themselves to the jurisdictional dispute method that both of the Employers and the Carpenters have already agreed to.

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<sup>22</sup> Despite this assertion, the Carpenters stated they cannot recall any time Article II of the Carpenters' CBA has been applied to a dispute with the Laborers. Tr. Vol. 4 548:8-13.

It is no surprise that both the Employers and the Carpenters, through their respective attorneys, resist this approved mechanism. Both know that “contractor preference” can carry substantial weight in a 10(k) analysis. Such is not the case in arbitration, where industry and area practice are significant factors in the analysis. It is no shock that the Carpenters threatened “job actions” and the employers, both carpenter-owned companies, filed § 8(b)(4)(D) unfair labor practice claims. This Board should not allow this perverse manipulation of the system, especially when there is before it an agreed-to voluntary method to resolve this jurisdictional dispute. The glaring question remains, why won’t the Employers and the Carpenters resolve this dispute under the terms they bargained for and agreed to? The answer is readily apparent.

For the above reasons, the Board should quash the Notice of Hearing as the parties have agreed to a private method of adjusting the underlying work-assignment dispute.

**B. The factors used by the Board in § 10(k) jurisdictional disputes weigh in favor of awarding the work to the Glaziers.**

Should the Board not quash the Notice of Hearing, the Board should award the work in dispute to the Glaziers as the five factors used by the Board in § 10(k) jurisdictional disputes weigh heavily in the Glaziers’ favor. The five basic factors the Board looks to in § 10(k) cases are (1) collective bargaining agreements and certifications, (2) efficiency and economy of operations, (3) relative skills and safety, (4) area and industry practice, and (5) the employer’s practice and preference. *Machinists Lodge 1743 (J.A. Jones Constr. Co.)*, 135 NLRB 1402 (1962). The Board does not “establish the weight to be given the various factors. Every decision will have to be an act of judgment based on common sense and experience rather than on precedent.” *Id.* at 1411. As the first four factors weigh in favor of the Glaziers, and the remaining

factor, the employer's preference,<sup>23</sup> is not determinative, the Board should award the work in dispute to the Glaziers.

### **1. Collective bargaining agreements and certifications**

The first factor, regarding collective bargaining agreements and certifications, weighs in favor of the Glaziers as the nature of the work in dispute places it within the traditional and historical jurisdiction of the Glaziers' collective bargaining agreement ("the Glaziers' CBA"), rather than the Carpenters' CBA. The Glaziers' CBA, in Article II, Section 2, sets out the trade jurisdiction of the Glaziers. Joint Ex. 2. Explicitly listed as the work of the Glaziers are, among many other types of work, "window panels," "store front panels," "tempered and laminated glass," "and all interior glazing systems." *Id.* The Glaziers CBA goes on to specifically assert jurisdiction over "all interior glazing systems including aluminum storefront or office front metal fabricated by metal fabricators or glass workers, partitions and demountable glazing systems, including those in any or all of the buildings related to store front and window wall." *Id.* In contrast, the Carpenters' CBA mentions "partitions" at several points when discussing jurisdiction, but never specifically mentions glass partitions. Jt. Ex. 1. In fact, the word "glass" does not appear anywhere in the Carpenters' CBA. While the Carpenters assert that the "Furniture Addendum" covers partitions, the addendum also does not specifically mention 'glass' partitions,<sup>24</sup> and the Carpenters only added the addendum to the agreement in 2011. Tr. 274. The Addendum was created to assist furniture contractors with market recovery funds in the area outside of Boston. Tr. 495.

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<sup>23</sup> This case raises the question of whether the NLRB, historically inclined to defer to the employer's preference when other factors are more or less equal, will defer to the employers where the objective factors strongly support the unfavored union which has been performing the work for generations.

<sup>24</sup> The Furniture Addendum mentions "demountable partitions." Jt. Ex. 1. Neither the Addendum nor the collective bargaining agreement itself mentions "glass".

The Glaziers' CBA directly discusses the types of work completed at the jobsites involved in the dispute, whereas the Carpenters rely on general language in their CBA, showing the first factor weighs in favor of the Glaziers. As the work in dispute falls directly within the language of the Glaziers' CBA and not within the language of the Carpenters' CBA, the first factor weighs in favor of the Glaziers.

## **2. Efficiency and economy of operations**

The second factor, efficiency and economy of operations, also weighs in favor of awarding the work to the Glaziers. Testimony at the hearing demonstrates that glaziers have more efficiently completed the installation of the work in dispute than carpenters. For example, Mr. Matt Moore stated that while working at the Nashua Street jobsite installing glass shower doors that the carpenters he was working with could not complete four shower doors per day like he, a glazier, was able to. Tr. 781. The carpenters were unable to competently caulk the doors and so his supervisor (a carpenter foreman) instructed the four workers to leave the caulking to Mr. Moore as a glazier. Tr. 781-82 20:8. Furthermore, while the Employers stated at hearing they preferred the Carpenters in part because of efficiency and economy reasons, they were unable to state whether glaziers would in turn lack skill sets that are necessary for tradesmen. Tr. Vol. 2 195 2:14. As the direct evidence points towards the installation of glass as more efficient when done by glaziers, the factor weighs in the Glaziers' favor.

This Board must also weigh and consider the fact that these contractors are signatory to two different collective bargaining agreements. Simply because they employ more carpenters than glaziers is not a principled reason to declare that the work is more efficiently performed by carpenters.

### **3. Relative skills and safety**

The Board has considered the availability of a union-operated training center to be relevant in weighing the relative skills and safety of workers in a jurisdiction dispute. *Typographical Union No. 53 (Cleveland) (Sherwin-Williams Co.)*, 224 NLRB 583 (1976). In the present case, the Glaziers operate a training center, the Finishing Trades Institute of New England (FTI-NE) that provides an extensive program of study for the Glaziers. Painters Ex. 17. Through the training programs at FTI-NE, the Glaziers are specifically trained in the work in dispute, including trainings on structural glazing, storefronts, aluminum entrances, settling blocks, spacers, tapes, gaskets, and related hardware. *Id.* Regarding safety in particular, safety is an important enough consideration that the Board has considered it as a separate factor. *See, e.g., Laborers Local 721 (H.H. Hawkins & Sons Co.)*, 288 NLRB 1246 (1988). At FTI-NE, the apprenticeship coordinator, Mr. Tom Falter, is also a certified Occupational Safety and Health Association training instructor. Painters Ex. 16. FTI-NE provides the safety training to all apprentice glaziers. Tr. Vol. 4 596 22:25. As the evidence indicates the Glaziers receive specific skills and safety training related to the work in dispute, the weight of the third factor supports assignment of the work to the Glaziers.

### **4. Area and industry practice**

The fourth factor, area and industry practice, again weighs heavily in favor of the Glaziers. As several contractors testified at hearing, it is the area and industry practice to assign work involving glass to the Glaziers. Tr. Vol. 5 707 18:22 (contractor in business since 1935 stating work is done by “our glaziers”); Tr. Vol. 5 719 18:23 (field supervisor of contractor in business for 39 years stating the work had been exclusively done by the Glaziers “until recently”); Tr. Vol. 5 732 14:15 (Vice President of local contractor stating, “I’ve been in the

business almost 30 years. It's like we've always done it with glazers"). As summarized by the business agent of another union, the installation of interior glass walls has "always been the work of the glaziers." Tr. Vol. 5 743 1:2. The testimony at hearing shows that the area and industry practice in the Greater Boston area is to award glass work to the Glaziers, and so the fourth factor weighs in the Glaziers' favor.

#### **5. Employer's practice and preference**

The Glaziers acknowledge that the fifth factor, employer's practice and preference, weighs in favor of the Carpenters, as the Employers stated at hearing their preference to assign the work to the Carpenters. Tr. Vol. 2 54 10:12; Tr. Vol. 2 163 11:12. However, the Board has emphasized that "an employer's assignment of disputed work cannot be made the touchstone in determining a jurisdictional dispute." *Millwrights Local 1102 (Don Cartage Co.)*, 160 NLRB 1061, 1078 (1966). In fact, since the Board is "reluctant to disturb area practice... absent some compelling reason," the Board has held that it will not go against area and industry practice where to do so would "invite controversy in an area where effective [practices] have already been established." *Carpenters Local 171 (Knowlton Constr. Co.)*, 207 NLRB 406 (1973). Since, as noted in the fourth factor above, other contractors and other area unions recognize this work as the work of the Glaziers, to disturb that guideline in this case would likely invite controversy. As such, the Board should give the other four factors more weight than the employer's preference and award the disputed work to the Glaziers.

Employer practice should not become a reason for an NLRB work assignment where, as here, the practice has developed by violating the work registration provisions of another union's contract,

