

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

**PAINTERS & ALLIED TRADES DISTRICT COUNCIL 36
AND SIGN DISPLAY & ALLIED CRAFTS LOCAL 510**

and

FREEMAN EXPOSITION, INC.

Case 20-CD-253060

and

TEAMSTERS LOCAL NO. 2785

CHARGING PARTY’S POST-HEARING BRIEF

Pursuant to 29 C.F.R. § 101.35, Charging Party, Freeman Exposition, Inc. (“Freeman” or “Employer”), through its undersigned Counsel, files its post-hearing brief following the close of the 10(k) hearing, which occurred on February 26-27, 2020. For the reasons stated herein, reasonable cause exists for the Board to believe Section 8(b)(4)(D) has been violated. The Board therefore must adjudicate the existing jurisdictional dispute between the Painters & Allied Trades District Council 36 and Sign Display & Allied Crafts Local 510 (“Local 510”) and Teamsters Local No. 2785 (“Teamsters”) under Section 10(k) of the National Labor Relations Act (“NLRA” or “Act”). As will be described in greater detail below, the Employer believes the disputed work should be assigned to Local 510.

I. Facts

Freeman builds exhibitions, which include trade shows, conventions, and corporate events. Tr. 21:23-25, 22:5-10; BX 2, ¶ 3. Freeman has contracts with three unions: Local 510; the

Teamsters; and IBEW, Local 6.¹ Tr. ² 23:14-20. The current dispute involves Local 510 and the Teamsters.

The Teamsters and Local 510 collective bargaining agreements both define the scope of the work performed by the bargaining unit. The Teamsters' 2017-2020 collective bargaining agreement states, in relevant part:

The operation of all trucks and vans with a capacity of carrying in excess of 1.5 tons of deco material or freight, for the purposes of producing Trade Shows, Conference's (sic), and Conventions in accordance with this Agreement and current weight practices, shall be performed by employee's (sic) covered by this Agreement.

EX 3 at 2. This language first appeared in the parties' 1999-2002 collective bargaining agreement. Compare EX 8 at 6 to EX 9 at 8. negotiated into the parties' collective bargaining agreement in 1999.

By comparison, Local 510's 2018-2021 collective bargaining agreement states it has "sole jurisdiction" over: "driving of trucks (bobtails, and stake-beds and vans) in the delivery and/or installation, removal of the above work, and warehouse work, including forklift operation where currently performed." EX 4 at 4. Prior to the 2012-2015 collective bargaining agreement, Local 510 limited their jurisdiction to "the driving of trucks of a maximum capacity of one and one-half tons" (emphasis added). Compare EX 10 at 9 to EX 11 at 3. However, as former Local 510 Business Representative Joe Toback testified, the removal of the weight designation was not

¹ The employer has approximately 400 employees, which include around 200 decorators, 70-80 Teamsters, and 100 electricians. Tr. 37:3-11.

² For the purpose of clarity, the transcript shall be abbreviated as "Tr.," the Board's exhibits shall be abbreviated as "BX," the Employer's exhibits shall be abbreviated as "EX," the Teamsters' exhibits shall be abbreviated as "UX," and Local 510's exhibits shall be abbreviated as "CPX."

intended to “seek any work that we weren’t already doing”; instead, it was simply a “reflection of reality.” Tr. 171:15-21.

1. “Hot Runs”

In broad terms, Local 510 is responsible for handling the exhibition equipment at the Employer’s South San Francisco warehouse, setting up the exhibition, and breaking it down when the event is over. Tr. 24:3-6; 25:14-15, 26:20-23. The Teamsters load, unload, and transport the exhibition equipment from the Employer’s warehouse to the exhibition site by tractor-trailers. Tr. 29:14-15, 30:14-16. Approximately 95% of the equipment is transported by tractor-trailer. Tr. 30:18-19. Teamsters exclusively drive the tractor-trailers, which require Commercial Drivers Licenses (“CDLs”). Tr. 49:20-21, 50:4-6.

The remaining 5% of the transportation work is what the Employer refers to as “hot runs.”³ “Hot runs” typically occur during exposition set-up, to deliver items as needed at the event location. Tr. 47:22-24. As Freeman Senior Vice President of Operations Bill Kuehnle described, they are generally driven by customer requests: “Once they arrive at the show site, they realize they want to add something else to their display.” Tr. 45:13-15. These items are then transported via box truck, panel van, and stake truck; none of which require the operator to hold a CDL. Tr. 49:12-17, 24-25; 50:1-3; 56:8-9; 290:9-24; BX 2, ¶ 5. However, nearly all these vehicles have a capacity in excess of 1.5 tons. *See, e.g.*, EX 7.

These “hot runs” have historically been handled by Local 510.⁴ Tr. 48:2; 138:12-16. In fact, Local 510 had conducted these runs since at least 1996. Tr. 136:8-9. This is consistent with

³ During the hearing, these were also referred to as “as-needed” or “emergency” runs. *See, e.g.*, Tr. 228:17-19; 282:18.

⁴ Over the last decade, from 2009 through 2019, Freeman’s business has quadrupled. Tr. 292:15-16. As a result, it now schedules three “hot runs” from the show site. Tr. 293:17-21. As Mr. Kuehnle explained, this was intended to “maintain some level [of] efficiency and also make sure

the practice at other industry employers. At GES,⁵ for example, Local 510 drivers have made “hot runs” for at least twenty years. Tr. 201:15-17. GES Vice President of Labor Relations, Guy Langlais, testified this work was “by and large” performed by Local 510-represented employees. Tr. 200:13-15, 201:1.

Although Teamsters witnesses claimed their bargaining unit employees also performed “hot runs,” there is no dispute Teamster-represented employees did not exclusively perform this work prior to August 2019. Tr. 260:6-8. In fact, the Teamsters were aware for “years” that Local 510-represented employees were conducting “hot runs.” Tr. 260:23-24. As Teamster Bob Fabris testified, he had ongoing conversations with his Teamsters steward, Bill Cromartie, “for some time.” Tr. 250:20-23.

2. The Teamsters’ 2018 Grievance and Resulting Work Jurisdiction Dispute

Despite contending this was “their work,” the Teamsters did not file a grievance over the practice until October 2018. Tr. 204:20-23; 260:16-18. The grievance challenged the use of non-bargaining unit employees to conduct “hot runs” (“the handling and transfer of deco and materials by employees driving smaller trucks, such as box trucks, stake-bed trucks or vans, and perhaps bobtail trucks too[.]”).⁶ EX 5 at 11. Arbitrator Christopher David Ruiz Cameron sustained the grievance in his September 16, 2019 award. The Arbitrator concluded that the Employer violated the collective bargaining agreement by such assignments and ordered Freeman to “cease and desist from violating the CBA by assigning or permitting the work at issue to be performed by Local 510

we deliver on behalf of the customer.” Tr. 293:17-19. However, additional “hot runs” still occur outside of the three scheduled hot runs.” Tr 293:25, 204:1-2.

⁵ GES has about 20 to 25 percent share of the San Francisco Bay Area’s trade show industry. Tr. 194:11-13.

⁶ There is no dispute Local 510 was not a party to this grievance nor represented by counsel at the arbitration. Tr. 285:19-23; 287:10-15.

members or any other persons outside the Teamster Bargaining Unit.” EX 5 at 23. Following receipt of the Arbitrator’s Award, Freeman reassigned all the “hot runs”—historically performed by Local 510—to the Teamsters within three to four weeks. Tr. 58:16-17. The Teamsters perform the work to this day. Tr. 58:20-21.

Freeman then communicated this change to Local 510. Tr. 58:18-19. On October 2, 2019, Local 510 responded by filing its own grievance, claiming jurisdiction over the work. EX 1. In its October 2019 letter, it “demand[ed] that [Freeman] immediately cease and desist from making this unlawful work assignment.” *Id.* It continued, “If you fail to do so, Local 510 will have no choice but to pursue all available remedies, including lawful primary picking remedies at the show site.” *Id.* Following receipt of this threat, the Employer filed the pending unfair labor practice charge. BX 1; EX 2.

II. Argument

1. There Is Reasonable Cause to Believe Section 8(B)(4)(D) Has Been Violated.

The Board has long held it may proceed with a determination of a dispute under Section 10(k) of the Act provided there is reasonable cause to believe a violation of Section 8(b)(4)(D) exists. To make such a determination, the Board must evaluate whether there are competing claims to the disputed work, a party has used proscribed means to enforce its claim to the work in dispute, and the parties have not agreed on a method of voluntarily adjust the work. *See, e.g., ILWU Local 12 (Southport Lumber Co., LLC)*, 367 NLRB No. 16 (2018). Without question, all three elements have been met in this case.⁷

⁷ The parties have stipulated no agreed-upon method for voluntary adjustment of the dispute exists. Board Ex. 2 at ¶ 8.

- a. This is a work jurisdiction dispute, with competing claims to the disputed work.

Despite the Teamster's contention, the dispute before the NLRB today is a work jurisdiction, not work preservation dispute. There is no dispute that the Board has specifically held that no jurisdictional dispute exists if the underlying issue is the preservation of work a group of employees have historically performed. *See, e.g., Teamsters Local 107 (Safeway Stores)*, 134 NLRB 1320 (1961). As the Board stated in one of the cases cited by the Teamsters, 10(k) does not apply when employer "unilaterally created the dispute by transferring the work away from the only group previously claiming and performing it under a CBA." *SIUNA (Recon Refractory)*, 339 NLRB 825 (2003).

Yet, this cannot be a work preservation dispute, as the Teamsters have not historically and exclusively performed the work at issue. This is not a situation where the Teamsters are "attempt[ing] to retrieve the jobs" which the Employer "reallocated" to Local 510. *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818, 820-21 (1986). Rather, as undisputed testimony in the record demonstrates, Local 510 has performed "hot runs" for the Employer for more than two decades. The dispute only exists because, after years of acquiescence, the Teamsters filed a grievance, claiming jurisdiction of the work.⁸

⁸ While stating her position on the record, the Teamster's lawyer claimed the Employer is not entitled to use the 10(k) procedure because it "has entered into collective bargaining agreements that presume to give the same jurisdiction to more than one Union." Tr. 13:18-20. However, none of the cases she cited support her factual premise: that an employer cannot avail itself of 10(k) when it has negotiated conflicting provisions in two separate CBAs. The cited cases instead involved subcontracting (*IBEW Local 48 (Kinder Morgan)*, 357 NLRB 2217 (2011); *Steel, Paper House, Chemical Drivers Local 578 (Wesco, Inc.)*, 280 NLRB 818 (1986)) and the recent assignment of historical, exclusive work to another union (*Recon Refractory and Const. Inc. v. NLRB*, 424 F.3d 980 (9th Cir 2005); *ILWU Local 62-B v. NLRB*, 781 F.2d 919 (D.C. Cir. 1986); *IAM District 190 Local 1414 (SSA Terminal, LLC)*, 344 NLRB 1018, 1020 (2005)).

This case is, in fact, one most appropriate for resolution under the 10(k) process. The U.S. Supreme Court has made clear the 10(k) process is intended to remedy disputes where “[the quarrel] is of so little interest to the employer that he seems perfectly willing to assign work to either [group of employees] if the other will just let him alone.” *NLRB v. Radio Engineers*, 364 U.S. 573, 579 (1961). This is the Employer’s position. When asked which Union he preferred to perform the work at issue, Freeman Senior Vice President of Operations Bill Kuehnle testified:

[I]t’s a very difficult question for me because I find myself, you know, in the middle of two good, reliable union partners. ... [M]y primary concern is to manage our business and avoid any disruptions that are going to impede our profitability and their pay. So it’s very difficult for me to kind of split the baby here[.] ... [I]n hindsight, I kind of leaned on the side of the status quo, and I –still makes sense to me going forward.

Tr. 77:1-10. As is clear from Mr. Kuehnle’s testimony, the Employer’s ultimate goal is to reach a clear, final resolution of the ongoing dispute between the two unions.

- b. Local 510 has used proscribed means to enforce their claim to the work by threatening picketing at the show site.

The Board has long considered a union’s threat of picketing to be a proscribed means of enforcing claims to disputed work, such that there is reasonable cause to believe Sec. 8(b)(4)(D) has been violated. *See, e.g., Laborers Local 110 (U.S. Silica)*, 363 NLRB No. 42 (2015). In reaching this conclusion, the Board considers whether “the statement made on its face constitutes a threat to strike” and whether there is any evidence that the threat was not made seriously or the Union had in any way colluded with the Employer. *See, e.g., ILWU Local 1575*, 289 NLRB 1215, 2017 (1988); *Brewers and Maltsters Local Union No. 6*, 270 NLRB 219, 220 (1984). “It is well settled that where a charged party has used language that on its face threatens economic action, the Board will find reasonable cause to believe that Section 8(b)(4)(D) has been violated.” *Int’l Union of Bricklayers and Allied Craftworkers*, 343 NLRB 1030, 1032 (2004). It is not dispositive that the

Decorators did not carry out the threatened picket; “the Board is mandated to act on the threat of a work stoppage, not to wait for the fulfillment of that threat.” *IBEW Local 26*, 268 NLRB 902, 904 (1984).

Therefore, there can be no dispute that Local 510’s October 2, 2019, letter to the Employer was a use of proscribed means. In its letter, Local 510 clearly states it “will have no choice but to pursue all available remedies, including lawful primary picking remedies at the show site.” EX 1. The Board has found nearly-identical statements to be a use of proscribed means. *See, e.g., IBEW Local 876 (Newkirk Electric Associates, Inc.)*, 365 NLRB No. 81 (2017) (Letter stated the reassignment of work “would subject [the Employer] . . . to actions by [IBEW] Local 876 including, but not limited to, the filing of unfair labor practices, picketing, and other applicable conduct directed to challenge any reassignment . . .”). The Board therefore has reasonable cause to believe Sec. 8(b)(4)(D) has been violated in this case.

2. The Board Must Affirmatively Award the Disputed Work to Employees in Local 510.

Where, as here, there is reasonable cause to believe Section 8(B)(4)(D) has been violated, the Board must then make an affirmative award of disputed work. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577-579 (1961). The Board uses a multi-factor balancing test to reach a determination based on its “experience and common sense.” *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410-1411 (1962). The following factors are applicable to the pending dispute:

i. *The Employer’s Preference and Past Practice*

The employer’s preference is generally entitled to “substantial weight.” *Laborers Local 265 (Henkels & McCoy, Inc.)*, 360 NLRB 819, 824 (2014); *Iron Workers Local 1 (Goebel Forming)*, 340 NLRB 1158, 1163 (2003). The Board generally does not examine the reasons for

an employer's preference unless there is evidence of coercion. *Laborers Local 265 (AMS Construction)*, 356 NLRB 306, 310 (2010). No such evidence exists in this case.

Instead, the Employer's stated preference is consistent with its practice for more than more than twenty years. It is undisputed: employees represented by Local 510 have been performing "hot runs" since at least 1996. As Mr. Kuehnle testified, Freeman's preference for Local 510 in this matter is a matter of "leaning on the side of the status quo." Consistent with Board precedent, the factors of employer preference and past practice both favor awarding the disputed work to employees represented by Local 510. *See, e.g., Laborers Local 860 (Ronyak Paving, Inc.)*, 360 NLRB 236, 240 (2014); *Laborers Local 265 (AMS Construction)*, 356 NLRB at 310.

ii. The Industry Practice

Undisputed testimony shows that Local 510-represented employees performed "hot runs" at other industry employers and have for many years. For example, GES Vice President of Labor Relations, Guy Langlais, testified these runs were "by and large" conducted by Local 510-represented employees. Such evidence supports awarding the disputed work to Local 510. *Bridge Iron Workers, Local Union No. 1 (Goebel Forming, Inc.)*, 340 NLRB 1158, 1162 (2003).

iii. Collective Bargaining Agreements

Since 2012, both Unions' collective bargaining agreements have contained language granting both parties jurisdiction over the work in dispute. The Teamsters' agreement states its employees shall "operat[e] ... all trucks and vans with a capacity of carrying in excess of 1.5 tons of deco material or freight," while Local 510's agreement provides it has sole jurisdiction over "driving of trucks (bobtails, and stake-beds and vans) in the delivery and/or installation, removal of the above work, and warehouse work". In this case, the hot runs are handled using

some of the Employer's vehicles with capacity of more than 1.5 tons. Where, as here, both agreements arguably cover the work in dispute when the runs are more than 1.5 tons, the Board has found that this factor does not favor awarding the work to employees represented by one union over the other. *Laborers Local 860 (Ronyak Paving, Inc.)*, 360 NLRB 236, 240 (2014); *Laborers Local 265 (Henkels & McCoy, Inc.)*, 360 NLRB at 824.

iv. Necessary Skills and Training

Similarly, there is no dispute that both groups of employees possess the skills required to perform the disputed work. Employees represented by Local 510 have performed "hot runs" for decades. They are not required to hold any special licenses; box trucks, panel vans, and stake trucks do not require operators to have a CDL. Where, as here, both groups of employees possess the requisite skills to perform the disputed work, the Board has found that this factor does not favor awarding the work to employees represented by one union over the other. *IBEW Local 876 (Newkirk Electric Associates, Inc.)*, 365 NLRB No. 81 at 7.

III. Conclusion

Upon consideration of the above, the Board must conclude there is reasonable cause to believe Section 8(B)(4)(D) has been violated and that the factors show that employees represented by Local 510 are entitled to perform the work in dispute.

Respectfully submitted,

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PROOF OF SERVICE

On March 12, 2020, an electronic copy of the Charging Party's Post-Hearing Brief in the above-captioned matter was served on the following individuals via email:

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