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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

and

FREEMAN EXPOSITION, INC.

and

TEAMSTERS LOCAL NO. 2785

Case No. 20-CD-253060

**POST-HEARING BRIEF OF PAINTERS & ALLIED TRADES DISTRICT COUNCIL 36**  
**AND SIGN DISPLAY & ALLIED CRAFTS LOCAL 510**

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## **I. Introduction**

This proceeding pursuant to Section 10(k) of the National Labor Relations Act (“Act”) concerns a dispute between Painters & Allied Trades District Council 36 and Sign Display & Allied Crafts Local 510 (“Local 510”) (collectively, “Painters”) and Teamsters Local 2785 (“Teamsters”) over the assignment of “hot-runs” at Freeman Exposition, Inc. (“Freeman”). As discussed below, application of the traditional factors applied in Section 10(k) cases requires assignment of such work to Local 510-represented employees.

Freeman is a contractor that installs tradeshow, conventions, and similar events in the San Francisco Bay Area. Freeman frequently determines during the course of an installation that it needs additional materials and/or supplies from its warehouse to complete the installation. Until recently, Freeman assigned work related to the transportation of such materials – so-called “hot-runs” – to its Local 510-represented employees. Indeed, Freeman prefers to assign such work to its Local 510-represented employees, consistent with its longstanding practice.

However, in 2018, Teamsters Local 2785, which also represents Freeman employees, pursued a grievance against Freeman in order to require Freeman to reassign hot-runs to Teamsters-represented employees. In 2019, an arbitrator sustained the Teamsters’ grievance and, contrary to Freeman’s preference and past practice, required Freeman to reassign hot-runs to Teamsters-represented employees. Compelled to do so by the arbitration award, Freeman complied. Shortly thereafter, the Painters objected to the reassignment and threatened to picket Freeman. This proceeding followed.

As described below, several of the factors traditionally applied in Section 10(k) cases require assignment of the hot-run work to Local 510-represented employees. Freeman prefers to assign such work to Local 510-represented employees; Freeman’s longstanding practice, until recently, was to assign such work to Local 510-represented employees; GES, another large

tradeshow contractor in the San Francisco Bay Area, until recently also assigned such work to Local 510-represented employees; Freeman’s agreement with the Painters clearly covers hot-runs; and Freeman’s assignment of hot-runs to Local 510-represented employees is more efficient than assigning the work to Teamsters-represented employees.

Hoping to avoid an adverse decision under Section 10(k), the Teamsters moved to quash the notice of hearing. Their motion should be denied. Contrary to the Teamsters’ argument, Freeman did not create this dispute and thereby lose the ability to invoke Section 10(k). Rather, the Teamsters created this dispute by forcing Freeman to reassign hot-runs to Teamsters-represented employees, contrary to Freeman’s preference and longstanding past practice. Thus, because Freeman is caught between two unions with competing claims to the disputed work, it is precisely the type of employer that Section 10(k) protects. Moreover, the Teamsters’ claim that the underlying dispute is merely one involving work preservation is without merit. The Teamsters pursued their grievance to acquire work that they had not previously performed, not to preserve such work.

For these reasons and those that follow, the Painters respectfully request that the Board assign the disputed work to Local 510-represented employees.

## **II. Statement of Facts**

### **a. Freeman Decorating**

#### **i. Freeman’s General Tradeshow Installation Operations**

Freeman is a general contractor providing tradeshow and convention installation services in the San Francisco Bay Area. Tr. 19:23–23:13. Freeman has a warehouse in South San Francisco where it stores and maintains materials and supplies used in the installation process. Tr. 24:4–6.

Freeman employs installers – also known as “decorators” – represented by Sign Display

& Allied Crafts Local 510 (“Local 510”).<sup>1</sup> Tr. 23:16–24:1. Installers work at Freeman’s warehouse preparing and maintaining materials and supplies for upcoming events. Tr. 24:7–25. Those materials and supplies include graphics and signage, decorative items such as carpeting, seating, wall systems, and tables, and similar items. Tr. 24:17–25. Freeman employs approximately 50 installers who work primarily at its warehouse. Tr. 35:11–16.

In addition, Freeman employs installers at show sites – convention centers such as Moscone Convention Center in San Francisco, the Santa Clara Convention Center, and the San Jose Convention Center, or hotels like the San Francisco Hilton or Hyatt on Embarcadero – who build and dismantle shows. Tr. 25:6–25. For example, installers build exhibit booths, hang signs, and install carpet, tables, chairs, and other show materials. Tr. 25:14–26:11. When the show or event is over, installers dismantle the show or event and return all of the items to crates for shipment back to Freeman’s warehouse. Tr. 26:23–27:4. The number of installers at a show depends on the size of the show, but can reach as many as 200. Tr. 37:7.

Freeman also employs individuals represented by Teamsters Local No. 2785. Tr. 28:9–32:23. Teamsters-represented employees drive Freeman’s 48-foot and 53-foot tractor-trailers, which Freeman uses to transport about 95% of its materials and supplies from its warehouse to a show site. Tr. 30:16–25. Teamsters-represented employees also work at Freeman’s warehouse loading, unloading, and receiving trailers. Tr. 28:11–17. Freeman employs between four and six Teamsters-represented employees at its warehouse. Tr. 35:19–21.

Teamsters-represented employees also work at show sites unloading materials and supplies that come in to the loading dock, and deliver those materials and supplies from the loading dock to their ultimate location at the show. Tr. 31:7–20. When crates and cartons become empty as a result of the show installation, Teamsters-represented employees return

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<sup>1</sup> Local 510 has represented Freeman’s installers since approximately 1993, when Freeman first entered the tradeshow industry in the San Francisco Bay Area. Tr. 125:21–126:1.

empty crates and cartons back to the trailers. Tr. 31:20–24. Teamsters-represented employees also operate forklifts as necessary at the show site. Tr. 32:7–13. Although the number of Teamsters-represented employees at a show depends on the size of the show, it can reach as many as 70 to 80. Tr. 37:5.

**ii. Freeman’s “Hot-Runs”**

The work in dispute is referred to as “runner work” or “hot-runs.” Tr. 43:19–20. Often during installation of a trade show, convention, or other event, Freeman determines that additional materials and/or supplies are required to complete the installation. *See* Tr. 43:25–46:12. Hot-runs involve the delivery of such materials and/or supplies. *See id.*

For example, a customer might place a late order for additional signs or graphics, or arrive at a show site and determine it wants to add items to its display. Tr. 44:9–10; 45:13–17. Similarly, furniture or equipment may be missing from an initial delivery to the show site, or is damaged and needs to be replaced. Tr. 44:10–11; 45:21–46:12. All such items are needed on an urgent basis to prepare a show for opening. Tr. 44:16–21. Hence, hot-runs occur two to three times a day during the installation process (but less when the show is open). Tr. 47:10–18; 134:18–21. Freeman delivers such items to the show in a small truck or van. Tr. 44:14–15.

Hot-runs are ordinarily initiated when an installer calls the warehouse foreman – also a Local 510-represented employee, Tr. 95:9 – who in turn assigns an installer to obtain the item from the warehouse and load it into a box truck (also referred to as a “pie wagon”), stake bed truck, or van for delivery to the show site. Tr. 48:5–14; 49:12–19; 134:23–135:14; 140:15–141:20. No commercial driver license is required to drive these vehicles. Tr. 50:3.

Until recently, Local 510-represented employees drove Freeman’s hot-runs. Bill Kuehnle, Freeman’s Senior Vice President of Operations and the General Manager of its San Francisco office, testified that Local 510-represented installers drove Freeman’s hot-runs at least

since his arrival at Freeman in 2009. Tr. 19:19–20; 48:2–25. Freeman’s manifests, which accompany each hot-run, corroborate Kuehnle’s testimony: They show that, until recently, Local 510-represented installers drove Freeman’s hot-runs to show sites. *See* Tr. 60:10–66:2; 139:3–140:11; *see* Freeman (“ER”) Ex. 6b (February 2019 hot-run manifests).

Kuehnle’s testimony was also confirmed by the testimony of Joe Toback, who, in addition to working as a business representative for Local 510 from 1986 to 1996 and 2011 to 2019, worked as an installer for Freeman between 2000 and 2010.<sup>2</sup> Tr. 124:10; 129:19–131:25. Toback testified that Local 510-represented installers always drove hot-runs for Freeman while he worked there, and that he never saw Teamsters-represented employees performing such work. Tr. 134:4–139:16; 142:22; 146:2–11; 147:3. Likewise, beginning in 1993 when Freeman began operating in the San Francisco Bay Area, Toback observed as a business representative that Freeman assigned hot-run work to Local 510-represented employees.<sup>3</sup> *See* Tr. 136:14; 167:14–168:7.

When the hot-run arrives at a show site, sometimes installers (at least until the 2019 work reassignment) meet the vehicle and receive the materials and/or supplies. Tr. 138:1–3. At some smaller show sites, installers are the only Freeman employees that are present to receive such items. Tr. 179:12–13; *see also* 146:25–147:21. Other times, including when materials and/or supplies require use of a forklift, Teamsters-represented employees unload it. Tr. 138:5–6.

Such work has increased significantly over the last decade. Kuehnle testified that during the last ten years, the San Francisco Bay Area has experienced a substantial increase in the

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<sup>2</sup> According to Local 510’s records, Toback worked 2,049 hours for Freeman between 2000 and 2010. Tr. 131:12–15; Painters Ex. 5.

<sup>3</sup> Tellingly, the Teamsters failed to call a single Freeman employee as a witness to rebut Kuehnle’s or Toback’s testimony. In fact, Teamsters business representative Bill Cromartie supported their testimony when he testified that he routinely observed Local 510-represented Freeman employees driving hot-runs. Tr. 263:4–13.

number and complexity of tradeshows and conventions.<sup>4</sup> Tr. 292:19–24; *see also* 278:1. Freeman’s share of that market has increased too, evidenced by a quadrupling of its revenues from the San Francisco Bay Area tradeshow industry during that same period. Tr. 292:11–24. Understandably, the frequency and number of Freeman’s hot-runs during that same period have increased as well. Tr. 293:15–24; *see also* Tr. 262:19–263:1. Thus, Freeman now has several scheduled hot-runs each day during a large installation. Tr. 293:17–24. That way, Freeman avoids the cost and inefficiency that would be caused by repeatedly sending trucks back and forth to show sites. Tr. 293:17–24.

**b. The Painters**

Sign Display & Allied Crafts Local 510 (“Local 510”) represents installers and related classifications of employees in the tradeshow and convention industry in the San Francisco Bay Area. Tr. 98:21; 100:16–17; 101:6–10; 124:19–25; *see, e.g.*, ER Ex. 4 (2018–21 Local 510 collective bargaining agreement). Local 510 is affiliated with Painters & Allied Trades District Council 36 (“District Council 36”).<sup>5</sup> Tr. 98:21; 125:14–16.

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<sup>4</sup> Kuehnle’s testimony about the increase in the San Francisco Bay Area tradeshow industry was confirmed by the report of work hours of Local 510-represented employees over the last decade. *See* Painters Ex. 13. That report indicates – with the exception of a decrease in 2017 attributable to the renovation and corresponding partial closure of the Moscone Center – a steady increase in reported work hours in the tradeshow industry between 2011 and 2019. *See id.*; Tr. 109:20–111:19. Kuehnle’s testimony was also confirmed by Joe Toback, who testified that during his second term as business representative with Local 510 from 2011 to 2019, he noticed that the volume of work in the San Francisco tradeshow industry increased, and that Freeman’s share of that work increased as well. Tr. 147:7–22.

<sup>5</sup> District Council 36 is a subordinate body of the International Union of Painters and Allied Trades which assists local unions, including Local 510, with collective bargaining and related matters. Tr. 98:5–6; 101:13–22. Thus, Freeman’s current agreement with the Painters is with “Painters and Allied Trades District Council 36, on behalf of Sign Display and Allied Crafts Local Union 510.” Painters Ex. 11, at 1; Tr. 102:13–14. The Painters’ 2010 and 2012 agreements are likewise between the employer and District Council 36 on behalf of Local 510. *See* Freeman Exs. 10–11. Local 510 entered into older agreements on its own behalf. *See, e.g.*, Painters Exs. 6–9.

Local 510 has represented installers in the San Francisco Bay Area tradeshow industry since at least the 1960's. *See* Painters Ex. 6 (1968-70 tradeshow agreement). Since at least that time, Local 510's collective bargaining agreements have provided it with sole jurisdiction over the installation and removal of exhibits and related materials in connection with tradeshows, corporate and special events, and conventions.<sup>6</sup> *See* Painters Ex. 6 (1968–70 tradeshow agreement, Art. I); Painters Ex. 11 (2018–21 tradeshow agreement, Art. I).

Relevant here, Local 510's agreements have also provided it with jurisdiction over certain transportation work related to the tradeshow and convention industry. For example, its 1968 agreement provided that a journeyman installer was responsible for, among other things, “[d]riving of trucks of a maximum capacity of one and one-half tons, in the delivery and/or installation” of covered work. Painters Ex. 6 (Art. XI(A)(6)). With minor changes, such transportation work has been consistently covered by successive agreements.

For instance, the 1978–81 agreement provided that Local 510 had “sole jurisdiction over” certain work, including “driving of trucks of a maximum capacity of one and one-half tons in the delivery and/or installation and/or removal of” covered work. Painters Ex. 7 (Art. I(A)(4)); *see also* Painters Ex. 8 (1981–84 agreement, Art. I(A)(2) (same)). Similarly, the 2004–07 agreement provided that Local 510 had “sole jurisdiction over” certain work, including “driving of trucks of a maximum capacity of one and one-half tons in the delivery and/or installation removal of the above work and warehouse work, including forklift operation where currently performed. All such work shall be done by workers governed by this Agreement, in conformity with past practice.” Painters Ex. 9 (Art. I(A)(4)); *see also* Freeman Ex. 10 (2010–12 agreement, Art. I(A)(4) (same)).

In 2012, the Painters clarified the transportation provision of their tradeshow agreement.

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<sup>6</sup> Local 510 has always negotiated a single master agreement with tradeshow contractors. Tr. 153:22–154:6.

The relevant provision of the agreement eliminated reference to the 1.5-ton carrying-capacity of the vehicles driven by Local 510-represented employees, and replaced it with reference to the specific types of vehicles driven by Local 510-represented employees. Thus, the 2012–15 agreement provided that Local 510 had sole jurisdiction over, among other things, “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.” ER Ex. 11 (Art. I(B)(1)(c)).

Toback was a principal negotiator for Local 510 during the 2012 negotiations. Tr. 168:23–169:1. He testified that the parties agreed to replace the 1.5-ton language with a description of the specific types of vehicles used by Local 510-represented employees so that the agreement conformed to the parties’ historical practices. *See* Tr. 170:4–172:8; 177:3. As Toback explained, “we never went by weight. Weight wasn’t an issue. It was what we were carrying. We were carrying decorators’ equipment.”<sup>7</sup> Tr. 170:6–8; *see also* 176:5–15; 178:22–23. Notably, none of the employers objected to the proposed change based on a conflicting work assignment to another trade or craft. Tr. 172:5–8; *see also* Tr. 217:12–23.

That same language has been carried forward in Local 510’s agreements, and is in its current collective bargaining agreement with Freeman. *See* Painters Ex. 11 (2018–21 agreement, Art. I(B)(e)). Approximately 50 tradeshow contractors are also parties to the same collective bargaining agreement, including GES and Curtain Convention and Exposition Services. Tr. 41:15–42:6; *see, e.g.*, Painters Ex. 12 (2018–21 agreement between Local 510 and GES).

As far as Toback knows, until the present dispute Freeman had never informed Local 510

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<sup>7</sup> Toback’s testimony is supported by the evidence concerning the carrying capacity of the vehicles Freeman uses for hot-runs, all of which exceed 1.5 tons in carrying capacity. *See* ER Ex. 7; Tr. 50:9–21. According to that evidence, Freeman’s stake bed truck can carry up to 4,110 pounds; its cargo vans can carry up to between 4,110 pounds to 6,453 pounds; and its box truck (which is the same as a “bobtail” or “pie wagon”) can carry up to 8,646 pounds. *See id.*

that the Teamsters objected to Freeman's assignment of hot-runs to Local 510-represented employees. *See* Tr. 172:20–23.

**c. The Teamsters**

Teamsters Local No. 2785 (“Teamsters”) also represents employees in the San Francisco Bay Area tradeshow and convention industry. *See* Tr. 254:17–18; 255:1–2.

In 1996, Freeman and the Teamsters entered into a collective bargaining agreement covering certain transportation work. Specifically, the agreement provided that “[o]nly persons working under the jurisdiction of this Agreement shall: (A) Drive, load and unload trucks, trailers, vans, operate forklifts or any other type of equipment used in connection with trucks.” ER Ex. 8 (Art. X, Sec. 1(A)).

The parties' subsequent agreement, however, limited the Teamsters' jurisdiction to operation of trucks and vans with a carrying capacity in excess of 1.5 tons as follows:

This Agreement shall cover all drivers . . . who perform the work of loading, unloading and transferring freight or deco material as enumerated in Article X, Section 1, or this Agreement using trucks, vans, forklifts and related equipment (hand trucks, dollies, electric carts, etc.) under the control of the Employer when used in performing work covered by this Agreement. The Operation of all trucks and vans with a capacity of carrying in excess of 1.5 tons of deco material or freight, for purposes of producing Trade Shows, Conference's and Conventions in accordance with this Agreement and current work practices, shall be performed by employee's covered by this Agreement.

ER Ex. 9 (Art. I, Sec. 3). Article X of the agreement continued to provide that “[o]nly persons working under the jurisdiction of this Agreement shall: (A) Drive, load and unload trucks, trailers, vans, operate forklifts or any other type of equipment used in connection with trucks.” *Id.* (Art. X, Sec. 1(A)).

Bill Cromartie, Teamsters Local 2785 President and Business Agent, Tr. 254:24, participated in negotiations that led to the 1.5-ton provision in the Teamsters' agreement, and testified as follows regarding the reason for the provision:

It came about from the discussions about who had the authority to drive any sized truck.

And if I recall correctly that language came about because I think - - it might've been put on the table by the Employers. *And I think we came to the decision to put the 1 1/2 tons so that they could have Local 510 do emergency runs, what's referred to the last couple of days as hot runs.*

Tr. 271:8–14 (emphasis added). He further emphasized that the parties' discussion "probably was more like on an emergency basis, who's going to jump in that truck to get the product down to the show site so the show can continue to get put in and it would probably be a discussion like that." Tr. 274:22–25. Cromartie could not recall exactly what types of trucks Freeman had at that time, but believed that Freeman had a bobtail trucks, cargo vans, and a stake bed truck. Tr. 273:5–6; 274:16–17; 283:21–284:3.

Freeman and the Teamsters are parties to a current agreement that is similar in all material respects to the 1999 agreement.<sup>8</sup> *See* ER Ex. 3 (2017–20 agreement). Approximately 20 trade show employers are also party to the agreement, including GES. *See* Tr. 38:5–6; 256:11–17.

**d. The Teamsters Forced Freeman to Reassign Hot-Run Work**

On or about October 3, 2018, the Teamsters filed a grievance against Freeman. *See* Teamsters Ex. 1. The grievance alleged that Freeman violated the Teamsters' collective bargaining agreement, including Article X, Section 1(A), by allowing non-Teamsters-represented employees to load, unload, and drive trucks from Freeman's warehouse. *See id.* The grievance asked Freeman to cease and desist the practice. *See id.*

Cromartie admitted the issue underlying the grievance was not a recent one. Tr. 260:9–261:23. He testified that "[o]ver the years it's been brought to my attention," that he had discussed the matter with Freeman management on previous occasions, and that the Teamsters and Freeman had never resolved the dispute. Tr. 260:24–261:23.

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<sup>8</sup> The only difference between these provisions in the 1999 agreement and the 2017 agreement appears to be the addition of "electric pallet jacks" to Article X, Section 1(a). *See* ER Ex. 3.

Freeman and the Teamsters held a Board of Adjustment panel regarding the grievance on or about December 12, 2018.<sup>9</sup> *See* Teamsters Exs. 2–3. In the written report from the Board of Adjustment panel, the parties described the grievance as follows: “The grievance . . . alleg[es] violation of the Agreement by Freeman using employees of another bargaining unit to load and unload trucks at their warehouse and driving the trucks hauling deco to the show site at Moscone Center.” Teamsters Ex. 3, at 1. Notably, the parties acknowledged that “[t]he work in question is currently performed by employees represented by Sign & Display Local 510.” *Id.* at 1. The Board of Adjustment deadlocked on resolving the dispute. *Id.* at 2; Tr. 264:20. The Teamsters thereafter advanced the grievance to arbitration. *See* ER Ex. 5.

At the arbitration, Freeman took the position that the work should continue to be assigned to Local 510-represented employees.<sup>10</sup> Tr. 76:24; *see also* ER Ex. 5, at 6–7, 15–16. Nevertheless, on September 16, 2019, the arbitrator issued an opinion finding that Freeman violated the Teamsters’ agreement by assigning hot-run work to Local 510-represented employees. *See* Ex. 5. As a remedy, the arbitrator ordered Freeman “to cease and desist from violating the [Teamsters] CBA by assigning or permitting the work at issue to be performed by Local 510 member or any other persons outside the Teamsters Bargaining Unit.” *Id.* at 23.

As it was ordered to do by the arbitrator’s award, Freeman thereafter reassigned the hot-run work from Local 510-represented employees to Teamsters-represented employees. Tr. 58:8–17. Teamsters-represented employees have been performing the hot-run work since that time. Tr. 58:22–25. Now, instead of a single installer pulling the necessary inventory from the warehouse, loading it into a vehicle, and transporting it to the show site, two Freeman employees are necessary to perform the work: An installer pulls the inventory from the warehouse and

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<sup>9</sup> The Board of Adjustment is described in the grievance procedure outlined in Article VII, Sections 1 and 2 of the Teamsters CBA. *See* ER Ex. 3 (Art. VII).

<sup>10</sup> Local 510 was not a party to the arbitration. Tr. 76:21; 285:23.

brings it to a staging area in the warehouse, and a Teamsters-represented employee loads the inventory into a vehicle and drives it to the show site. Tr. 59:4–24.

Although it was ordered to reassign hot-run work to Teamsters-represented employees, Freeman continues to prefer to assign the work to Local 510-represented employees, consistent with the company’s longstanding status quo. Tr. 77:1–10.

e. **Area Practice: Local 510-Represented Employees Performed GES Hot-Runs Until 2019**

GES is another large tradeshow and convention contractor that has between 20-25% of the tradeshow market in the San Francisco Bay Area. Tr. 194:13. Installers at GES are also represented by Local 510. Tr. 149:2; Painters Ex. 12 (2018–21 agreement between Local 510 and GES).

Toback worked as an installer at GES at various times between 1998 and 2010. *See* Painters Ex. 5; Tr. 149:10. He testified that GES performed hot-runs during tradeshow or event installations in the same fashion as Freeman, and that, like Freeman, assigned hot-run work to Local 510-represented installers. Tr. 151:10–152:2. Toback never saw Teamsters-represented employees performing hot-runs at GES.<sup>11</sup> Tr. 152:4.

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<sup>11</sup> Teamsters witness Robert Fabris, a GES employee, testified that both Local 510-represented employees and Teamsters-represented employees drove hot-runs at GES. Tr. 230:2–11; 231:25. According to Fabris, Local 510-represented employees performed the work when Teamsters-represented employees were unavailable. Tr. 230:11. He estimated that Teamsters-represented employees performed the work 90% of the time, and that Local 510-represented employees performed the remaining 10% of such work. Tr. 233:5–6; 236:23.

Fabris’ testimony should be given little weight, if any. First, he admitted that although company manifests would show which group of employees was performing GES’ hot-runs, he had not reviewed them prior to his testimony and instead had arrived at his 90%/10% estimate on the morning of the hearing. *See* Tr. 241:1–20. Second, Fabris admitted that the 90%/10% estimate did not apply prior to January 2019, and that he had no idea who performed GES’s hot-runs prior to January 2019. Tr. 242:5–17. Third, Fabris appears to have provided conflicting testimony on this point in an earlier proceeding. According to the arbitration award from the Teamsters-Freeman arbitration, “Bob Fabris, the Teamsters foreman at GES . . . testified that, in his 28 years of experience, the past practice was that Teamsters drivers and not Local 510

GES's Vice President of Labor Relations, Guy Langlais, also testified that, until recently, GES assigned hot-run work to Local 510-represented installers. Tr. 193:24–194:6; 199:21–200:15. According to Langlais, GES had assigned hot-run work to Local 510-represented employees for at least the last 20 years. Tr. 201:13–17.

As with Freeman, until recently the Teamsters had never objected to GES's assignment of hot-run work to Local 510-represented employees. Tr. 204:15–23. However, following issuance of the arbitration award assigning hot-run work at Freeman to Teamsters-represented employees, the Teamsters provided the arbitration award to GES's warehouse manager and informed him that they expected GES to "follow [it] going forward." Tr. 205:3–12. GES thereafter reassigned the hot-run work to Teamsters-represented employees. *See* Tr. 205:20–206:1.

Nevertheless, GES, like Freeman, prefers to assign hot-run work to its Local 510-represented employees, in accordance with its longstanding practice. Tr. 207:4–6.

**f. The Painters Threatened to Picket Freeman with the Object of Forcing Freeman to Reassign the Work Back to Local 510-Represented Employees**

Following the issuance of the arbitration award reassigning Freeman's hot-run work to Teamsters-represented employees, Local 510 representatives contacted Steve Bigelow, Assistant Business Manager with District Council 36, and informed him about the arbitration award and work reassignment at Freeman. Tr. 104:6–15; 105:16. Bigelow thereafter wrote to Freeman General Manager Bill Kuehnle. *See* Freeman Ex. 1; Tr. 66:8–13; 107:8–13.

In his letter, Bigelow "register[ed] the strongest possible protest of the recent decision of Freeman . . . to assign Local 510's work to another union, Teamsters Local 2785." *Id.* He

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members perform the work described above, including loading and unloading of deco and material and driving trucks, whether box trucks or other types of trucks, to transfer it." ER Ex. 5, at 14; Tr. 247:1. Based on his testimony in this proceeding, that testimony was plainly incorrect.

further demanded that Freeman “cease and desist from making this unlawful work assignment” and threatened to picket Freeman at a show site if Freeman failed to reassign the transportation work back to Local 510-represented employees. *Id.*

Kuehnle responded to Bigelow on November 13, 2019. ER Ex. 3; Tr. 67:9–12. In his letter, Kuehnle stated that Freeman was ordered to reassign hot-run work to Teamsters-represented employees, and that Local 510’s claim for the work has presented Freeman with a “dispute over the jurisdiction of the work.” ER Ex. 2. Kuehnle further advised Bigelow that Local 510’s picketing threat violated the Act, and that the company would file an unfair labor practice charge. *Id.*

The next day, Freeman filed an unfair labor practice charge against District Council 36 and Local 510 alleging a violation of Section 8(b)(4)(D) of the Act. Bd. Ex. 1. This proceeding followed.<sup>12</sup>

### **III. The Work in Dispute**

The parties stipulated that the work in dispute is as follows: “The work in dispute is the loading, unloading, and transportation of equipment and materials using ‘runner’ vehicles (box trucks, panel vans, stake beds) during trade shows and other events produced by the South San Francisco Branch of the Charging Party.” Bd. Ex. 2, ¶ 5.

### **IV. Argument**

The necessary elements for proceeding to a determination of a work assignment dispute under Section 10(k) of the Act are as follows:

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<sup>12</sup> Freeman filed the initial charge on November 14, 2019 (Case No. 20-CD-251862). After the Region issued a notice of hearing pursuant to Section 10(k) of the Act, the parties were unable to find a time during which all parties were available for a hearing. Freeman thus withdrew the initial charge, and on December 6, 2019, the Region approved the withdrawal request. Freeman re-filed the identical charge later that same day (Case No. 20-CD-253060). The Region thereafter issued a notice of hearing pursuant to Section 10(k) of the Act, and set the hearing for February 10, 2020. Following Freeman’s request to reschedule the hearing, the Region rescheduled the hearing for February 28, 2020.

The Board may proceed with a determination of a dispute under Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work and that a party has used proscribed means to enforce its claim to the work in dispute. Additionally, there must be a finding that there is no agreed-upon method for voluntary adjustment of the dispute to which all parties are bound.

*Local 876, Int'l Bhd. of Elec. Workers (Newkirk Elec. Assoc., Inc.)*, 365 NLRB No. 81, slip op. at \*4 (May 19, 2017) (internal citation omitted). As described below, each of these elements has been met here. Moreover, as is first discussed below, the Teamsters' motion to quash the notice of hearing should be denied.

**a. The Teamsters' Motion to Quash Should Be Denied**

The Teamsters moved to quash the notice of hearing, contending that (1) Freeman created this work assignment dispute and is therefore not entitled to resolution of the dispute pursuant to Section 10(k); and (2) this case presents a work preservation dispute, not a jurisdictional dispute within the scope of Section 10(k). *See* Tr. 13:15–15:14. The Hearing Officer denied the Teamsters' motion, *see* Tr. 17:22–24, and the Board should too.

**i. The Cases Cited by the Teamsters in Support of the Motion to Quash Are Distinguishable**

The essence of a work assignment dispute subject to Section 10(k) of the Act is a “dispute between two or more groups of employees over which is entitled to do certain work for an employer.” *NLRB v. Radio & Television Broad. Eng'rs Union, Local 1212*, 364 U.S. 573, 579 (1961). A jurisdictional dispute arises within the meaning of Section 10(k) of the Act when an employer is “an obviously neutral party thrust into a work dispute that it did not cause.” *Mine Workers (Bronzite Mining)*, 280 NLRB 587, 590 (1986).

By contrast, “the Board will not afford the employer the use of a 10(k) proceeding to resolve a dispute of its own making.” *Indus., Professional and Tech. Worker Int'l Union (Recon*

*Refractory & Constr., Inc.*), 339 NLRB 825, 828 (2003). In particular, Section “10(k) proceedings are intended to settle disputes between rival groups of employees, not to permit an employer to foment a dispute by transferring the work away from the group claiming it.” *Theatrical Stage Employees Union, Local 2 (Event Media, Inc.)*, 366 NLRB No. 123, slip op. at \*4 (July 9, 2018).

The Teamsters cited several inapposite cases in support of their motion to quash the notice of hearing, each of which is discussed below.<sup>13</sup> See Tr. 14:20–15:9. The cases are distinguishable for a simple reason: Unlike the employers in the cases cited by the Teamsters, Freeman did not create the present work assignment dispute by unilaterally transferring work from Local 510-represented employees to Teamsters-represented employees.

For example, in *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818 (1986), Safeway, whose employees were represented by the United Food and Commercial Workers (“UFCW”), subcontracted work to Wesco, whose employees were represented by the Teamsters. *Id.* at 818. After an arbitrator concluded that Safeway violated its contract with UFCW by subcontracting with Wesco, the Teamsters threatened to picket Safeway if it reassigned the work. *Id.* at 819. Although noting the dispute “may literally fall” within the scope of Section 10(k), the Board “look[ed] to the real nature and origin of the dispute” and concluded it concerned the employer’s authority to subcontract work: “[T]he dispute in the instant case turns on the alleged improper transfer of unit work from one employer (Safeway) to another (Wesco), and the fact that a work assignment was involved was incidental to the real dispute over Safeway’s alleged violation of

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<sup>13</sup> In their oral motion to quash, the Teamsters cited five cases: *Int’l Bhd. of Elec. Workers, Local 48 (Kinder Morgan Terminals)*, 357 NLRB 2217 (2011); *Int’l Ass’n of Machinists and Aerospace Workers, Dist. 190, Local Lodge 1414 (SSA Terminal, LLC)*, 344 NLRB 1018 (2005); *Indus., Professional and Tech. Worker Int’l Union (Recon Refractory & Constr., Inc.)*, 339 NLRB 825 (2003); *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818 (1986); and *Int’l Longshoremen’s & Warehousemen’s Union, Local 62-B v. NLRB*, 781 F.2d 919 (D.C. Cir. 1986). See Tr. 14:20–15:9.

its contract with UFCW.” *Id.* at 820–21. Having found that “Safeway created this dispute by breaching its collective bargaining agreement with UFCW,” the Board concluded that Safeway was not the “‘innocent’ employer that Section 10(k) was intended to protect.” *Id.* at 823.

The Board applied similar reasoning in *Indus., Professional and Tech. Worker Int’l Union (Recon Refractory & Constr., Inc.)*, 339 NLRB 825 (2003). There, the employer unilaterally reassigned work from Bricklayers-represented employees to employees represented by a rival union, which then threatened to picket if the employer reassigned the work back to Bricklayers-represented employees. *Id.* at 826. Although the Board acknowledged the dispute fell “literally” within the reach of Section 10(k), it quashed the notice of hearing and concluded that the “real dispute” was a contractual one between the Bricklayers and the employer. *Id.* at 827. The Board likened the case both to *Teamsters Local 578*, *supra*, and to *Teamsters Local 107 (Safeway Stores)*, 134 NLRB 320 (1961), where the employer “discharged employees represented by one union local, and subsequently reassigned the work they had performed to employees represented by other union locals.” *Id.* Describing *Teamsters Local 107*, the Board stressed that “Section 10(k) should not apply because the employer unilaterally created the dispute by transferring the work away” from one group of employees to another. *Id.*

Likewise, in *Int’l Ass’n of Machinists and Aerospace Workers, Dist. 190, Local Lodge 1414 (SSA Terminal, LLC)*, 344 NLRB 1018 (2005), the employer unilaterally reassigned work traditionally performed by employees represented by the International Longshore and Warehouse Union (“ILWU”) to employees represented by the Machinists (“IAM”). *Id.* at 1019. In quashing the notice of hearing, the Board ruled as follows:

[W]e conclude that the evidence fails to establish a traditional jurisdictional dispute between two rival groups of employees claiming the same work, with an innocent employer caught in the middle. Rather, *we conclude that SSA by its own unilateral actions—assigning to IAM-represented machinists work historically performed by ILWU-represented longshoremen—has created a work preservation dispute.*

*Id.* at 1021 (emphasis added). Again, the Board cited *Teamsters Local 107* in distinguishing between a “jurisdictional dispute cognizable under Sec[ti]on 10(k) from a situation in which ‘the employer by his unilateral action *created* the dispute.’” *Id.* at n.11 (emphasis in original).

Finally, in *Int’l Longshoremen’s & Warehousemen’s Union, Local 62-B v. NLRB*, 781 F.2d 919 (D.C. Cir. 1986), the court concluded that the underlying work assignment dispute “was entirely of the employer’s making . . . .” *Id.* at 925. The court found that the “record is quite clear that [the employer] alone made the decision to change from FAS to FOB shipment, thus effectively reassigning the work from the stevedoring company to its own employees.” *Id.* As the court concluded, “[w]here, as here, the employer created the dispute, § 8(b)(4)(D) and § 10(k) do not apply.” *Id.*

This case is easily distinguished from those discussed above. Unlike the employers in the above-described cases, Freeman did not create the present work assignment dispute by unilaterally reassigning hot-runs. Instead, *the Teamsters* created this dispute by pursuing a grievance to force Freeman to reassign the disputed work from Local 510-represented employees to Teamsters-represented employees, contrary to Freeman’s longstanding practice and preference. Freeman reassigned the work only after it was compelled to do so by the arbitration award. The Painters, in turn, threatened to picket Freeman unless it reassigned the work back to the Local 510-represented employees. Freeman is therefore precisely the party Section 10(k) was intended to protect, caught between two unions each claiming the same work. *See Radio and Tel. Broadcast Eng’rs Union, Local 1212*, 364 U.S. at 581–82.

Ignoring its role in provoking this dispute, the Teamsters appear to argue that Freeman created the dispute by assigning hot-runs to Local 510-represented employees while agreeing with the Teamsters that only Teamsters-represented employees could drive vehicles with a carrying capacity over 1.5 tons. *See* Tr. 87:14–88:24. The Board should reject that argument for

a few reasons. First, the 1.5-ton dividing line the Teamsters rely on is not as clear-cut as they contend. The 2017–20 Teamsters collective bargaining agreement assigns the driving of vehicles with a carrying capacity in excess of 1.5 tons only “in accordance with this Agreement *and current work practices . . .*” ER Ex. 3, at 2 (Art. I, Sec. 3) (emphasis added). Until late 2019, it is clear what those “current work practices” were: Freeman assigned hot-runs to Local 510-represented employees, who performed the work in stake bed trucks, bobtail trucks, and vans. *See, e.g.*, Tr. 48:2–25; 134:4–139:16; 146:2–11; 167:14–168:7. Thus, Freeman did not create this dispute by adhering to its longstanding work practices, regardless of the carrying capacity of the vehicles used to perform hot-runs.

In fact, Cromartie’s testimony highlighted this point. His testified the parties to the Teamsters agreement negotiated the 1.5-ton language with the specific purpose of allowing Freeman to continue assigning hot-runs to Local 510-represented employees. *See* Tr. 271:8–14; 282:18. As a result, it is clear that Freeman did not create this dispute by, consistent with its longstanding practice and the parties’ mutual intent, continuing to assign hot-runs to Local 510-represented employees.

Last, the Teamsters’ argument overlooks that Section 10(k) proceedings nearly always involve two unions with competing claims to disputed work based on their collective bargaining agreements. As the Board observed in *Laborers’ Int’l Union of N. Am, Local 931, AFL-CIO (Bolander & Sons Co.)*, 205 NLRB No. 49 (1991),

This case presents a traditional 10(k) situation in which two unions have collective-bargaining agreements with the Employer and each union claims its contract covers the same work. In these circumstances, a claim to the work in dispute based on an asserted contractual right to the work does not remove the case from being a 10(k) dispute. Rather, the contractual claim constitutes a claim to the work and is one of the relevant factors for the Board’s consideration in awarding that work.

*Id.* at 491. Put simply, contrary to the Teamsters’ argument, this case is not inappropriate for resolution pursuant to Section 10(k) simply because both the Teamsters and Painters claim their

collective bargaining agreement covers the disputed work.

ii. **The Teamsters' Work Preservation Defense Lacks Merit**

Not only are the cases cited by the Teamsters distinguishable, their work preservation argument is without merit. Because the Teamsters have never performed the disputed work, their object is to acquire work, not preserve it.

To prevail in an argument that a dispute concerns work preservation outside the scope of Section 10(k), the Teamsters “must show that the employees it represents have previously performed the work in dispute and that it is not attempting to expand its work jurisdiction.” *Laborers Int’l Union of N. Am., Local 265 (Henkels & McCoy)*, 360 NLRB 819, 822 (2014); *Dist. Council of Carpenters (Prate Installations, Inc.)*, 341 NLRB 543, 544 (2004) (“It is well established that for such a work preservation defense to prevail, the Carpenters must show that the employees it represents have previously performed the work in dispute *and* that it is not attempting to expand its work jurisdiction.”) (emphasis in original).

The Teamsters fail to meet that standard. The evidence unmistakably established that until issuance of the arbitration award, Local 510-represented employees, not Teamsters-represented employees, performed the disputed work at Freeman.<sup>14</sup> *See, e.g.*, Tr. 48:2–25; 134:4–139:16; 146:2–11; 167:14–168:7. By pursuing its grievance against Freeman, the

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<sup>14</sup> For this same reason, *Int’l Bhd. of Elec. Workers, Local 48, AFL-CIO (Kinder-Morgan Terminals)*, 357 NLRB 2217 (2011), cited by the Teamsters in support of its motion to quash, favors the Painters, not the Teamsters. In that case, the Board rejected the ILWU’s motion to quash the notice of hearing based on its contention that the underlying dispute was a contractual one over work preservation, not a jurisdictional dispute. *See id.* at 2218–19. As the Board observed, “when as here a union is claiming work for employees who have not previously performed it, the objective is not work preservation, but work acquisition. The Board will resolve that dispute through a 10(k) proceeding.” *Id.* Because Teamsters-represented employees did not perform the disputed work prior to the arbitration award, their objective is clearly work acquisition, not work preservation.

Teamsters thus sought to acquire the disputed work, not preserve it.<sup>15</sup> Their work preservation argument is therefore without merit. *See, e.g., Int'l Bhd. of Elec. Workers, Local 47 (Titan Srvcs.)*, 368 NLRB No. 11, slip op. at \*7 (June 18, 2019) (rejecting Operating Engineers' work preservation claim where its grievance sought work it had not previously performed); *Laborers Int'l Union of N. Am., Local 265 (Henkels & McCoy)*, 360 NLRB at 822; *Dist. Council of Carpenters (Prate Installations, Inc.)*, 341 NLRB at 544.

**b. There is Reasonable Cause to Believe There Are Competing Claims to the Disputed Work**

The parties stipulated that both the Painters and Teamsters claim the work in dispute. *See* Bd. Ex. 2, ¶ 2.

**c. There is Reasonable Cause to Believe that the Painters Violated Section 8(b)(4)(D) of the Act**

There is reasonable cause to believe that the Painters violated Section 8(b)(4)(D) of the Act when they threatened to picket Freeman with the object of forcing Freeman to reassign the disputed work to Local 510-represented employees. ER Ex. 1; *see Local 876, Int'l Bhd. of Elec. Workers (Newkirk Elec. Assoc., Inc.)*, 365 NLRB No. 81, slip op. at \*4 (May 19, 2017) (finding

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<sup>15</sup> Even if the Board finds that Teamsters-represented employees occasionally performed Freeman's hot-runs, the Teamsters' work preservation claim would still be without merit because their grievance sought to secure *all* such work for Teamsters-represented employees. *See, e.g., Laborers Int'l Union of N. Am., Local 265 (Henkels & McCoy, Inc.)*, 360 NLRB at 822–23 (holding that where two unions had previously shared jurisdiction of work and one union claimed sole jurisdiction, such a claim is not “work preservation,” but “work acquisition”); *Carpenters (Prate Installations, Inc.)*, 341 NLRB at 545 (rejecting Carpenters' work preservation defense where “Carpenters claimed *all* of the disputed work, including that previously performed by employees represented by the Roofers.”) (emphasis in original); *Int'l Alliance of Theatrical & Stage Employees*, 337 NLRB 721, 723 (2002) (“In the absence of any indication that this work history amounted to more than isolated assignments, we find that it provides Carpenters no basis to raise a valid work-preservation claim regarding the disputed work. The Carpenters' objective here was thus not that of work preservation, but of work acquisition.”).

reasonable cause to believe that union violated Section 8(b)(4)(D) when it threatened to picket the employer in support of its claim to disputed work) ; *Laborers Int'l Union of N. Am. Local 110*, 363 NLRB No. 42, slip op. at \*5 (Nov. 24, 2015) (noting that Board has “long considered” threat to picket in support of claim to disputed work “to be a proscribed means of enforcing claims to disputed work”).

The Teamsters will likely argue that the Painters’ picketing threat was not sincere.<sup>16</sup> Their argument, however, amounts to conjecture because they failed to present any affirmative evidence in support of their claim. “In the absence of affirmative evidence that a threat to take proscribed action was a sham or was the product of collusion, the Board will find reasonable cause to believe that the statute has been violated.” *Laborers Int’l Union of N. Am., Local 271, AFL-CIO (New England Foundation Co., Inc.)*, 341 NLRB 533, 534–34 (2004). Hence, the Teamsters’ argument should be rejected.

**d. There is No Agreed-Upon Method for Voluntary Adjustment of this Dispute to Which All Parties Are Bound**

The parties stipulated that “[t]here is no agreed-on method for voluntary adjustment of the work dispute in question here which would bind all parties.” Bd. Ex. 2, ¶ 8.

**e. The Board’s Traditional Section 10(k) Factors Support Assignment of the Disputed Work to Local 510 – Represented Employees**

“Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors,” including certifications, collective bargaining agreements, employer preference, the current assignment of the disputed work, past practice, area and

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<sup>16</sup> The Teamsters questioned why the Painters had not followed through on their picketing threat following Bigelow’s October 2, 2019 letter. *See* Tr. 116:22–117:3. As Bigelow explained, once he sent his October 2, 2019 letter to Freeman, he waited for Freeman’s response. Tr. 117:2–3. When Freeman responded by filing its unfair labor practice charge against the Painters, Bigelow determined that the work assignment dispute would be resolved by the Board’s processes, not through picketing. *See* Tr. 108:2–109:3.

industry practice, relative skills and training, and economy and efficiency of operations. *Local 876, Int'l Bhd. of Elec. Workers (Newkirk Elec. Assoc., Inc.)*, 365 NLRB No. 81, slip op. at \*6-7.

The Board's determination of a jurisdictional dispute is "an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case." *Id.* at \*6.

As described below, these factors favor award of the disputed work to the Painters.

**i. Neither Union is Certified by the Board**

Neither union presented evidence that it has been certified by the Board. This factor therefore favors neither party.

**ii. The Painters Collective Bargaining Agreement Directly Covers the Disputed Work**

Article I, Section B(1)(e) of the Painters agreement, which provides sole jurisdiction to Local 510 over certain installation work, specifically describes the types of vehicles used by Freeman to perform hot-runs – "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." Painters Ex. 11, at 2. Thus, this factor favors the Painters, even if the Teamsters agreement also covers the same work. *See Highway Road and Street Constr. Laborers Local 1010 (New York Paving)*, 366 NLRB No. 174, slip op. at \*3 (August 24, 2018) (finding factor in favor of Local 1010 where, although competing union's contract covered the same work, it was less specific than Local 1010's agreement). Indeed, it is undisputed that this provision was specifically negotiated by the Painters and signatory contractors, including Freeman, to conform to the existing practice of assigning hot-runs to Local 510-represented employees in the listed vehicles. *See* Tr. 170:4–172:8; 176:12–15; 177:3

Moreover, even the 1.5-ton provision in the Teamsters agreement, pursuant to which they claim the disputed work, favors the Painters. As Cromartie testified, that provision was

negotiated to allow signatory contractors, including Freeman, to continue assigning hot-run work to Local 510-represented employees. *See* Tr. 271:8–14; 282:18. Thus, even if the Teamsters’ agreement also covers the disputed work, its underlying bargaining history favors the Painters, not the Teamsters.

**iii. Freeman Prefers to Assign the Disputed Work to Local 510-Represented Employees**

“The factor of employer preference is generally entitled to substantial weight.” *Local 876, Int’l Bhd. of Elec. Workers (Newkirk Elec. Assoc., Inc.)*, 365 NLRB No. 81, slip op. at \*6 (citing *Laborers Local 265 (Henkels & McCoy, Inc.)*, 360 NLRB 819, 824 (2014)).

Freeman prefers to assign hot-runs to Local 510-represented employees, consistent with its longstanding past practice. Tr. 77:1–10. This factor therefore favors the Painters. *See Sign, Display and Allied Trades Local Union No. 1175 (Freeman Decorating Co.)*, 267 NLRB 1260 (1983) (awarding driving of all vehicles other than tractor-trailers between Freeman’s Florida facility to trade shows and conventions to Painters-represented employees, not Teamsters-represented employees, based, in part, on Freeman’s preference).

**iv. Area Practice Supports Assignment of the Disputed Work to Local 510-Represented Employees**

Like Freeman, GES had, until recently, consistently assigned hot-run work to Local 510-represented employees. Tr. 151:10–152:2; 201:13–17. Other large trade show contractors similarly assign such work to Local 510-represented employees. *See* Tr. 167:8–9. Area practice therefore uniformly favors the Painters. *See Sign, Display and Allied Trades Local Union No. 1175 (Freeman Decorating Co.)*, 267 NLRB at 1262 (awarding driving of all vehicles other than tractor-trailers between Freeman’s Florida facility to trade shows and conventions to Painters-represented employees, not Teamsters-represented employees, based, in part, on area practice);

*see also United Bhd. of Carpenters Local No. 171*, 207 NLRB 406, 409 (1973) (holding that Board is “reluctant to disturb area practice in making our [Section 10(k)] awards absent some compelling reason.”).

In fact, GES only reassigned its hot-run work to Teamsters-represented employees after the Teamsters, wielding the Freeman arbitration award, warned that they would pursue a similar grievance against GES. Tr. 205:3–206:1. However, like Freeman, GES continues to prefer assigning hot-run work to Local 510-represented employees consistent with its longstanding practice. Tr. 207:4–6.

v. **Local 510-Represented Employees Have Superior Skills and Training**

Although employees of both unions are equally skilled to drive Freeman’s hot-run vehicles, only Local 510-represented employees have the skills and training to install and dismantle trade shows and conventions.<sup>17</sup> Thus, Local 510-represented employees are in a better position to assist on both ends of a hot-run: They can help determine what materials and/or supplies from a warehouse are necessary to complete an installation, and they can assist installers at a show site in the event assistance is required with an installation. This factor therefore favors the Painters.

vi. **It is More Efficient for Freeman to Assign the Disputed Work to Local 510-Represented Employees**

The factor of economy and efficiency of operations favors the Painters for a straightforward reason. If hot-runs are assigned to Local 510-represented employees, one employee is necessary – a Local 510-represented installer pulls material from the warehouse,

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<sup>17</sup> Notably, since 2004, Local 510, along with Painters Union Local 831 in Southern California, has participated in a joint apprenticeship known as the California Tradeshow & Sign Crafts Joint Apprenticeship Training Committee (JATC). TR. 126:20–128:8; *see also* Painters Ex. 3 (JATC curriculum); Painters Ex. 4 (JATC rules and regulations). Upon completion of the JATC, apprentices become journeyperson installers. Tr. 127:11–13.

loads it in a vehicle, and transports it to a show. *See* Tr. 59:10–15. If hot-runs are assigned to Teamsters-represented employees, two employees are necessary – a Local 510-represented installer pulls material from a warehouse and leaves it in a staging area, and a Teamsters-represented employee loads the material into a vehicle and transports it to a show site. *See* Tr. 59:16–24.

This factor therefore favors the Painters. *See, e.g., Local 876, Int’l Bhd. of Elec. Workers (Newkirk Elec. Assoc., Inc.)*, 365 NLRB No. 81, slip op. at \*7 (finding economy and efficiency favors assignment of work to employees who can perform all aspects of work instead of employees who can perform only one aspect); *Laborers Local No. 113 (Michels Pipeline Constr. Inc.)*, 338 NLRB 480, 484 (2002) (observing that “[h]aving fewer employees accomplishing the same task . . . reduces costs in time, money, and personal safety”).

**V. Conclusion**

For the foregoing reasons, the Painters respectfully request that the Board assign Freeman’s hot-runs to Local 510-represented employees.

DATED: March 12, 2020

ROTHNER, SEGALL & GREENSTONE

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