

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

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 251**

**and**

Case Nos. 01-CB-219768  
01-CC-219536  
01-CC-219746

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 25**

**and**

**DHL EXPRESS (USA) INC.**

*Colleen M. Fleming and Miriam Hasbun, Esqs.*  
for the General Counsel.

*Marc B. Gursky (Gursky Wiens, North Kingstown, Rhode Island)*  
for Respondent Teamsters Local 251.

*Michael A. Feinberg, Esq. (Feinberg, Campbell & Zack, Boston, Massachusetts)*  
for Respondent Teamsters Local 25.

*Robert A. Fisher and Skelly Harper, Esqs. (Seyfarth Shaw LLP,  
Boston, Massachusetts)* for the Charging Party, DHL Express.

**DECISION**

**STATEMENT OF THE CASE**

Elizabeth M. Tafe, Administrative Law Judge. This case was tried in Boston, Massachusetts and Providence, Rhode Island between July 31 and October 24, 2018. DHL Express filed the initial charge giving rise to this case on May 1, 2018. The General Counsel issued the initial complaint on May 21, 2018.

The General Counsel alleges that Respondents violated Section 8(b)(4)(B) and 8(b)(1)A) of the Act. On May 1, 2018, employees of DHLNH,<sup>1</sup> a subcontractor in Pawtucket, Rhode Island, performing services on behalf of DHL Express picketed two DHL Express locations in Massachusetts for several hours. These employees were represented by Teamsters Local 251,

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<sup>1</sup> Sometimes referred to in this record as North East Freightways.

which was engaged in a labor dispute with DHLNH. DHL Express employees in Boston and Westborough, Massachusetts, were represented by Teamsters Local 25. Local 25 employees declined to cross the Local 251 picket line to report to work at DHL, with the approval of their Union. Regarding the 8(b)(4)(B) allegations, the Respondent Unions contend that DHL Express was not a neutral employer.

The General Counsel also alleges that the two Unions blocked ingress and egress to the DHL facility in Boston in violation of Section 8(b)(1)(A) of the Act.<sup>2</sup> The General Counsel further alleges that Local 25 violated Section 8(b)(1)(A) by making statements that reasonably tend to interfere with an employee’s Section 7 right to testify and cooperate with the NLRB.

The General Counsel further alleges that Local 251 and Local 25 are jointly liable for any violations found pursuant to an asserted “joint-venture” theory.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent Unions, and the Charging Party Employer, I make the following

**FINDINGS OF FACT<sup>3</sup>**

**I. JURISDICTION**

The Charging Party Employer DHL Express picks up and delivers packages and freight in the United States and internationally for residential and commercial customers. In New England, it has 29 service stations. Seventeen of these, including the stations in South Boston, Massachusetts (the Boston station or Boston facility) with about 100 employees, and Westborough, Massachusetts, with about 40 employees, are operated directly by DHL Express. Twelve are operated by subcontractors, at least some of which have a “Cartage Agreement” or similar contract to pick up and deliver freight on behalf of DHL Express. One of these companies in 2018 was DHLNH, sometimes referred to as North East Freightways, which operated the station in Pawtucket, Rhode Island. DHLNH/North East Freightways or related companies also operated the DHL Express stations in Albany, New York and Manchester, New Hampshire in May 2018.

I find that the Charging Party is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Teamster Locals 251 and 25 are labor organizations within the meaning of Section 2(5) of the Act.

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<sup>2</sup> The complaint, as amended at trial, did not allege that Local 25 blocked ingress or egress to the Boston facility. The General Counsel moved to amend the complaint in its post-trial brief to add this allegation. I deny the General Counsel’s motion to amend the complaint in its post hearing brief, because I find that Local 25’s culpability regarding this allegation has not been fully litigated.

<sup>3</sup> Although I include citations in this decision to highlight testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

*Teamsters Local 251's labor dispute with DHLNH*

On May 8, 2017, Local 251 filed a petition with the Board to represent the couriers  
 5 (drivers) at the Pawtucket facility (also referred to as PVD, the designation for the Providence,  
 Rhode Island airport). The Union initially identified the employer as “DHL Express USA/dba  
 Northeast Freightways Inc. (Joint Employer).” On May 12 it filed a new petition identifying the  
 employer as “DHL Express USA and DHLNH LLC (Northeast Freightways Inc.) (Joint  
 Employers).” On May 19 Local 251, the Board and DHLNH reached a stipulated election  
 10 agreement identifying DHLNH as the sole employer.<sup>4</sup> The Union won a Board representation  
 election and was certified as the exclusive bargaining unit of PVD couriers on June 15, 2017.

Beginning on September 1, 2017, Local 251 and DHLNH began collective bargaining.  
 DHLNH was primarily represented by Phillip Palker, DHLNH’s Chief Executive Officer,  
 15 Canaan Palker, DHLNH’s director of operations and Frank Davis, its attorney. The parties  
 reached a number of agreements and DHLNH agreed to add dockworkers at the PVD station to  
 the bargaining unit. In April 2018, negotiations broke down over issues relating to health  
 insurance and pensions. The contractor declined to agree to inclusion of its employees in the  
 Teamsters healthcare plan and the Teamsters pension fund. DHLNH proposed a health  
 20 insurance plan deemed far less generous by the Union and a Section 401(k) retirement plan.  
 Local 251 made plans to strike against DHLNH.

Just prior to this, on March 29, 2018 the Board certified Teamsters Local 251 as the  
 bargaining representative of several operations/customer service agents at Pawtucket who were  
 25 employees of DHL Express, not DHLNH. Attorney John Telford, who represented DHL  
 Express with regard to the operations agents, called Local 251’s principal officer Matthew Taibi  
 on April 26, 2018, asking him to hold off on a strike if DHLNH improved its contract offer.  
 DHLNH, by its attorney Frank Davis, did so, but not with regard to health insurance and  
 pensions. Taibi reported back his conversation with Davis to Telford.<sup>5</sup>  
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Local 251 attempted to get DHL Express to fund its health care and pension benefits for  
 DHLNH because DHLNH stated it could not afford to pay such benefits.

*Local 251 goes on strike at Pawtucket*

On April 30, 2018, Local 251’s drivers and dockworkers went on strike against DHLNH.  
 At 1:10 that afternoon, Mathew Taibi, principal officer of Local 251, sent an email to a number  
 of Teamster officials including John Murphy, the business agent for Local 25. He advised that  
 Local 251 planned to extend its picket lines to DHL Express locations the next day and opined  
 40 that “DHL Express is acting as an ally to DHLNH, providing management as couriers.” He  
 asked the recipients to give him the DHL location addresses and the best times to arrive, GC  
 Exh. 45.

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<sup>4</sup> As a result, the General Counsel and Charging Party argue that Local 251 waived any argument that  
 DHL Express and DHLNH are joint employers. I need not reach the issue of waiver since I find that  
 Local 251 has not established the companies to be joint employers.

<sup>5</sup> Davis and Telford were members of different law firms.

*Picketing at DHL Express Boston Station*

5 On May 1, 2018, several Local 251 picketers arrived at the DHL Express station in South  
 Boston at about 4:40 in the morning with a Local 251 business agent, Matthew Maini. John  
 Murphy, the business agent of Local 25 also came to the Boston station. Shortly thereafter at  
 about 5:00 a.m. a truck, whose driver did not work for DHL or DHLNH, arrived with cargo from  
 JFK airport in New York. The cargo had been flown to JFK from a DHL Express facility at  
 10 CVG, the principal airport for Cincinnati, Ohio, which is located in Northern Kentucky. The  
 plane carried cargo destined for DHL directly operated stations in Boston and Westborough,  
 Massachusetts and for contractor-operated stations in Providence and Manchester, New  
 Hampshire.

15 Murphy told DHL supervisor Wilford Perry that he would not let the truck enter the DHL  
 facility.<sup>6</sup> The picketers approached the truck and talked to the driver. The driver did not enter  
 the Boston facility immediately but remained parked outside the DHL Express gate. Eventually,  
 facilitated by the arrival of local police called by DHL Express, the JFK tuck passed through the  
 gate. As a result of the delay, some freight bound for Manchester was delayed by one day.

20 Afterwards, Local 251 picketers began walking in a circle carrying picket signs by the  
 customer entrance. While picketing they wore DHL Express uniforms and carried signs stating  
 that they were on strike against DHLNH due to inadequate health care and retirement benefits.

25 Four DHL Express employees reported to work at 5:00 a.m. and nine more at 6:30 a.m.  
 Business agent Murphy told them they had a contractual right to honor the picket line. None of  
 the DHL employees crossed the picket line. However, they did not engage in picketing  
 themselves. At one point, the DHL employees were approached by managers Seth Evans and  
 Laurice Bancroft, who advised them they were engaged in an illegal secondary strike. They also  
 talked to Local 25 business agent Murphy. Murphy told them that nobody from Local 25 was  
 30 going to cross the Local 251 picket line. At about 10:00 a.m., the Local 251 picketers left the  
 Boston station and the DHL Express employees went to work.

*Interference with egress from the Boston station*

35 Wilfred Perry, a DHL Express supervisor, tried to leave the station to go to Boston's  
 Logan Airport during the picketing at the Boston station. Perry testified that about 20-30 DHL  
 Express employees of DHL Express, and, members of Local 25, blocked his egress from the  
 parking lot. Perry returned to the vehicle bay and then tried to leave again later. This time two  
 Local 251 picketers stood in front of his truck for about 15 minutes when, according to Perry, it  
 was obvious he was trying to leave. Perry did not ask the individuals to move or honk his  
 40 vehicle's horn to apprise them of his need to leave. Perry left the facility with police assistance  
 and proceeded to Logan Airport to unload cargo.

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<sup>6</sup> Murphy did not directly contradict Perry's testimony on this matter at Tr. 138. See Murphy's  
 testimony at Tr. 701-704.

*Picketing at DHL Express Station in Westborough, Massachusetts*

At about 8:15 a.m. on May 1, 2018, Chris Smolinsky, a Local 251 organizer, arrived at the DHL Express station in Westborough, which is located just east of Worcester. He advised the Service Center Manager, Thomas McArdle, that Local 251 picketers were outside. McArdle called the Westborough police to remove local 251 members from a parking lot that DHL shares with two other businesses. Picketing had not yet commenced. The Local 251 members moved to the top of the driveway leading from the main road to the building housing DHL Express, a gym and MIG construction company. MIG owns the building; DHL is a tenant.

At 9:00 a.m. when most of the DHL Express drivers reported to work, none of them crossed the Local 251 picket line. Earlier, Bert Yocum, a clerical agent and Local 25 member, who was already at work, left the DHL building. David Grasso, a Local 25/DHL driver, who also arrived at work earlier, left work as well.

DHL manager McArdle told the Local 251 picketers that they were engaged in an illegal secondary strike. Local 251 took down the picket line at Westborough at about 10:00 a.m. Local 251 organizer Smolinsky so notified the Local 25 DHL Express employees, who had congregated at other locations. The DHL Westborough drivers thus started their workday about an hour later than scheduled but completed their work for the day.

DHL Express suspended every DHL employee at both Boston and Westborough who did not cross the picket line (60-63 employees) for 1 day. These suspensions were grieved and went to arbitration. The Union apparently asserted that employees were entitled to choose not to cross lawful picket lines and that the suspensions violated the collective bargaining agreement. See Article 8, Section 1 of the master collective-bargaining agreement between DHL Express and Local 25. GC Exh. 20.

*Alleged interference with the Board's processes*

A Local 25 steward informed John Murphy that Westborough driver David Grasso had contacted him to say that the NLRB had contacted Grasso to set up an interview. Grasso called Murphy who told Grasso to tell the Board agent to contact Local 25's attorney to set up a meeting to interview him.

On July 19, 2018, Local 25's attorney advised the General Counsel that he had instructed Local 25 represented employees of DHL Express to ignore any requests from the Board for an interview. He told the General Counsel to call him first if she wanted to speak to anyone Local 25 represented. GC Exh. 9.

*DHL Express' relationship with DHLNH at Pawtucket, Rhode Island*

The primary issue in this case is whether DHL Express is a neutral employer. If so, the picketing by Local 251 at Boston and Westborough violated Section 8(b)(4)(B). Local 25's activities during the picketing may also violate 8(b)(4)(B) if DHL Express was a neutral employer but would clearly not violate the Act if DHL Express was not a neutral.

DHL's business at the Pawtucket station was conducted pursuant to an "Cartage Agreement" by DHLNH (also known as North East Freightways) in April and May 2018.<sup>7</sup> However, the station manager at Pawtucket, Glen Marzelli, was a DHL Express employee. The building had a DHL Express logo on it.

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The clerical or customer service agents at Pawtucket, Bethany Stamp and Kathy O'Gara, were also DHL Express employees. At the time of the strike they were represented by Teamsters Local 251, albeit in a different bargaining unit than the drivers and dock workers<sup>8</sup>. DHLNH's top manager at Pawtucket, Anthony Santiago's office was located near Marzelli's office on the same floor. DHL employees and DHLNH employees parked in separate areas of the building's parking lot, had separate employee entrances and had a separate time clock. DHL Express generally played no role in the hiring, firing or disciplining of Providence drivers and dockworkers. However, the Cartage Agreement subjected them to criminal background checks, drug testing and other requirements, most, if not all of which, were mandated by the Federal Government.

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DHLNH maintained an employee handbook that is separate from that for DHL employees and took care of the personnel actions concerning its employees. However, employees of the two companies shared a common breakroom. There was a common land line telephone for the two companies, normally answered by Bethany Stamp, a DHL employee. Customers who wanted to add a pick-up for a package called a DHL 800 number.

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If customers had complaints about service from PVD, they called a DHL 800 number, which forwarded the complaint to DHL station manager Marzelli, who in turn forwarded them to DHLNH for resolution. At least sometimes, Marzelli followed up with DHLNH management to determine whether the complaint had been adequately addressed.

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DHLNH employees wore uniforms with the DHL Express logo, used DHL scanners to determine their daily routes and drove vehicles with that logo, augmented by notice that the vehicle was operated by DHLNH. When the Pawtucket trailer returned from Logan Airport, Stamp met it and signed a release before it was unloaded by DHLNH employees.

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DHL Express provided DHLNH with a planning tool which designated the routes to be serviced by DHLNH drivers and the packages to be delivered on those routes. DHLNH manager Anthony Santiago assigned individual drivers to each route. In December 2017, the DHL station manager played a role in resolving a dispute between Local 251 and DHLNH regarding Sunday work, Tr. 1114. Station Manager Marzelli increased the number of driver routes that day, so that each driver could work fewer hours.

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Local 251 in its brief relies mainly on the following facts, some of which are mentioned above, in asserting that DHL Express was either a joint employer or single employer of DHLNH employees and thus not a neutral. Barring that, Local 251 alleges that DHL Express was not a neutral employer because it was an "ally" of DHLNH.

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<sup>7</sup> The Cartage Agreement was signed in 2009 by Peter Palker on behalf of New England Freightways.

<sup>8</sup> The clericals did not strike but Stamp honored the picket line.

DHLNH could only operate in Rhode Island by virtue of its relationship with DHL Express

5 DHL Express maintained virtually complete control over DHLNH operations through its cartage agreement with it.

DHLNH operated exclusively out of the Pawtucket DHL Express facility.

10 DHLNH was the sole delivery contractor for DHL Express in the Providence region.

DHLNH could not work for any other carrier without DHL Express' permission.

15 DHL Express rented the building in which the PVD station was located. DHLNH did not pay rent.

DHL Express paid for 20 parking places at Pawtucket, but it had only 3 employees who worked there. Some or all the other parking spaces were for customers.

20 The Pawtucket facility had many signs indicating that it is a DHL Express business.

Employees of the 2 companies shared bathrooms, conference and break areas.

These employees shared a customer service desk and employee bulletin boards.

25 DHLNH supervisors had offices located a few feet from the DHL Express station manager.

DHL Express employee Bethany Stamp answered incoming calls for DHLNH.

30 To gain access to the facility with a key fob, one had to get it from DHL Express.

DHL provides the contractor employees with access badges to Logan Airport.

35 DHL Express employee Stamp met the truck from Logan Airport and broke the seal of containers before the DHLNH employees unloaded the packages onto a conveyor belt.

DHLNH performed its deliveries pursuant to an inbound planning tool provided by DHL Express.

40 DHL Express reserved its authority over who performed certain work. For example, it moved some work from Providence to Massachusetts pursuant to an arbitration award with Local 25.

45 DHLNH employees used a DHL Express scanner in performing their duties.

DHL Express set standards for driver appearance.

DHL Express station manager Marzelli was able to monitor virtually all of the Pawtucket warehouse on a large screen television.

DHL Express determined when priority packages must be delivered.

Pursuant to its agreement with DHL Express, DHLNH was not allowed to subcontract work without approval of DHL Express.

DHL provided security for the Providence facility during the Local 251 strike,

DHL senior managers came to Providence to assist the DHL station manager at the beginning of the strike.

*Local 25's alleged violation of Section 8(b)(1)(A) by making statements that reasonably tend to interfere with an employee's Section 7 right to testify and cooperate with the NLRB.*

The record shows that a Board Agent contacted DHL Express employee David Grasso, who contacted the Union. Grasso left the DHL facility in Westborough when the Local 251 picketers showed up there. The Union told Grasso to have the Board contact its attorney. Just prior to the start of this trial, Respondent's counsel emailed the General Counsel stating:

I understand you or somebody from your office has been calling employees of DHL who are represented by Local 25. Please don't do that. We've instructed everybody that receives a phone call from the National Labor Relations Board to ignore it. You want to speak to anybody we represent, call me first: Thanks.

GC Exh. 9B.

### *Analysis*

#### *"Joint-Venture" Theory*

As a threshold issue, I am unpersuaded that the two Teamsters locals engaged in a "joint venture" as alleged in the complaint or as that legal construct is set forth by the parties' arguments. See, e.g., *Sheet Metal Workers Local 19 (Declard Associates)*, 316 NLRB 426, 434(1995). Here, the record establishes that Local 251 decided to extend its picketing--which was indisputably related to its labor dispute with DHLNH--to DHL Express locations in Boston and Westborough, and then informed representatives of Local 25 that it would be doing so, because Local 25 represents employees at those locations. The fact that Local 251 and Local 25 representatives may have conversed during the picketing or the day before is simply immaterial under the circumstances where Local 251 had alerted Local 25 of the extended picket line at the worksites of Local 25's members. These are sister local unions of an international union. It would be discourteous and perhaps even unprofessional for Local 251 to fail to give Local 25 a heads up about its plan to picket at the DHL Express locations. *International Longshoremen's Ass'n, AFL-CIO*, 323 NLRB 1029, 1031 (1997). Moreover, Local 251's apparent belief that there was struck work being handled at the Boston and Westborough sites, in light of the

language in the Local 25 collective bargaining agreement that apparently permits unit members to honor a picket line under certain circumstances, would cause confusion for Local 25 members employed by DHL Express and subject to the privilege to honor picket lines by choosing not to cross them, would lead to confusion for DHL Express employees without notice provided to Local 25 representatives.

The General Counsel has failed to establish facts to support its notion that the two Local unions materially colluded or conspired to engage in unlawful activity or that they engaged in coordinated planning. Cf, *Overnite Transportation Co.*, 130 NLRB 1007, 1017 (1961)(ongoing, long term coordination and joint planning related to picketing activities contributed to Board's finding of joint liability of sister unions)<sup>9</sup> In fact, Local 25 representatives and, ultimately Local 25 members, generally believed that the picketing was lawful, and that employees had a contractual right to honor the picket line. The charging party, DHL Express, was well aware of this contractual right as well. Whether it was lawful to suspend employees for honoring the picket line under the facts of this case is not before me. However, as discussed below, the General Counsel has failed to establish that the several hours of picketing by Local 251 or the DHL Express employees' decision to honor the picket line were the result of a joint venture. See *International Longshoremen's Ass'n*, above.

Therefore, I find that the General Counsel has failed to establish that Teamsters Local 251 and Teamsters Local 25 are subject to joint liability for any violations found below.

#### *Section 8(b)(4)(B) allegations*

Section 8(b)(4) provides that it is an unfair labor practice for a labor organization or its agents to engage in the following conduct:

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is- -

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e) [subsection (e) of this section];

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or

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<sup>9</sup> Some cases relied upon by the General Counsel are simply inapposite to the facts and legal issues of this case. For example, *Retail Fruit & Vegetable Clerks' Union, Local 1017*, 116 NLRB 856 (1956) addresses a situation where unions engaged in picketing activities at a location that contained multiple employers, the lion's share of which were engaged in a primary labor disputes, but some were neutrals to the disputes; and *Seattle Dist. Council of Carpenters*, 114 NLRB 27, 30 (1955) addresses a situation regarding how the Board may find unlawful secondary activity in the context of the roving situs of primary employers. Not only are these issues not raised in the instant case, but since the 1950s the Board has developed rules and legal standards that apply to these factual circumstances beyond the holdings of these cases.

to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 [section 159 of this title]: Provided, That nothing  
 5 contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

Section 8(b)(1)(A) provides that it shall be an unfair labor practice for a labor  
 10 organization “to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act.”

Section 8(b)(4) implements the “dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and other forms of pressures in controversies not their  
 15 own.” *NLRB v. Denver Bldg. & Constr. Trades Council*, 341 U.S. 675, 692 (1951).

Much of this case then turns on the question of whether or not DHL Express was in fact a neutral employer with regard to the labor dispute between Teamsters Local 251 and DHLNH. The Respondent Unions bear a heavy burden of demonstrating that a particular employer with  
 20 whom it does not have a labor dispute is not a neutral, *Service Employees Local 525 (General Maintenance Co.)* 329 NLRB 638, 639 (1999). In order to meet this burden it must show that the picketed employer performs the primary’s struck work or that the picketed employer and the employer with whom it has a dispute are a “single employer,” “joint employers”<sup>10</sup> or “allies” in the dispute. These three concepts are closely related and often require a showing of the degree of  
 25 common ownership and/or management; common control of daily activities, including labor relations policies; the extent of integration or interrelation of business operations; and the dependence of one employer on the other for a substantial portion of its business.

Thus, there is no bright line between an employer which is a neutral in a labor dispute  
 30 and one which is not. *Service Employee Local 525, supra*, 329 NLRB 638 at 648 fn. 22. In April-May 2018 DHL Express played a major role in determining the terms and conditions of employment for DHLNH employees. DHL Express benefits financially in contracting its Providence work to a company that provides less generous benefits to the employees doing the business of DHL Express in Rhode Island. Nevertheless, the “disconnect” between Board law  
 35 and economic reality was explored by former Board Chairman Liebman in her concurrence in *Airborne Express*, 338 NLRB 137, 139 (2002). Although, *Airborne Express* is not an 8(b)(4) case, the facts are so substantially similar to this one, that a finding that DHL Express is not a

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<sup>10</sup> Given my resolution of this issue, I see no reason to rule on the General Counsel’s argument that Local 251 waived a “joint employer” defense. Moreover, since DHL Express did not have authority to dictate the wages, hours and working conditions of DHLNH employees, I find that it was not a “joint employer” under any standard.

Additionally, in *S.G. Tilden, Inc.*, 172 NLRB 752 (1968) the Board held that Tilden did not have joint-employer liability with two franchisees where the control exercised by Tilden over the franchisees was no greater than necessary to keep the quality and goodwill of the Tilden name from being eroded. Although, the relationship between DHL Express and DHLNH is not exactly one of franchisor/franchisee, I find the Tilden holding applicable to the instant case both as a legal principle and on the facts.

neutral would be inconsistent with the holding and Chairman Liebman’s misgivings about Board precedent.<sup>11</sup>

5 Similarly, in *Teamster Local 557 (General Motors)*, 338 NLRB 896 (2003) the Board found that Local 557 violated 8(b)(4)(B) by picketing General Motors because it shifted its car haul subcontractor from a company which recognized the Union to one that did not. In concurring, Member Liebman described the concept of “neutrality” as applied in that case to be a legal fiction in diluting employees’ Section 7 rights against employers who in fact determine the terms of their employment. Nevertheless, virtually every employer who subcontracts work could affect the wages of subcontractor employees by paying the subcontractor more. There is no Board precedent for finding that any similarly situated employer forfeits its neutral status for purposes of Section 8(b)(4)(B) for this reason.

15 Indeed, to the contrary, Board precedent is consistent with a finding that DHL Express was a neutral employer for purposes of 8(b)(4) analysis. DHL Express and DHLNH did not have common ownership or management. DHLNH largely controlled the daily activities of Local 25’s unit members, although DHL Express by designating routes did have an impact on those activities.<sup>12</sup> Labor relations policies of the two companies was separate as evidenced by the absence of DHL in collective bargaining between DHLNH and Local 251. DHL Express did not hire or fire drivers or dockworkers for the Providence station. There was, on the other hand, some degree of integration of the business operations. For example, both companies delivered packages arriving at Logan and JFK from Cincinnati/Northern Kentucky. Indeed, the record establishes that DHL Express controlled a substantial amount of the its subcontractors’ day-to-day logistical operations through expectations integrating the logistics of moving their packages from stations to hubs, and sorted to be shipped to other stations and hubs, domestically and internationally in order to meet the somewhat awesome expectations of timely delivery services promised to DHL Express’s clients. However, Board precedent fails to permit a finding of nonneutral status of DHL Express in the labor dispute between Local 251 and DHLNH according to either a joint-employers or single-employer theory based primarily on their logistical integration, in the absence of other supporting factors.

Some of the cases in which the Board has discussed the 8(b)(4) analysis determining the neutrality of one entity in the labor dispute of another are the following:

35 In *Teamsters Local 456 (Carvel Corp)*, 273 NLRB 516, 519-20 (1984), the Board discussed these principles in the context of picketing at a franchisee ice cream store, by a Teamster Local which had a labor dispute with the franchisor, Carvel Corporation.

40 Section 8(b)(4)(B) of the Act permits a union to exert economic pressure on an employer with which it has a primary labor dispute. At the same time, it prohibits activity aimed at an employer with which a union does not directly have a labor dispute in order

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<sup>11</sup> In *Browning-Ferris* 338 NLRB 1599 (2015) since reversed by the current Board, the then majority indicated that its expansion of the joint-employer concept did not apply to secondary activity by Unions.

<sup>12</sup> The extent to which the Cartage Agreement required DHLNH to comply with government regulations is not to be considered in determining DHL Express’ neutrality, *Aldworth Co.*, 338 NLRB 137, 139 (2002).

to disrupt that employer's relations with the primary employer. Thus, this section of the Act was designed to insulate neutral third parties from labor disputes in which they are not involved. However, the protection of the Act is not afforded to a third party employer which is so closely identified or allied with the primary employer that it ceases to be a neutral to the dispute.

With these considerations in mind, our initial inquiry herein is whether Grossman, the licensee, is a neutral party and thus subject to protection by the Act from secondary picketing. The answer to that question "can be resolved only by considering on a case-by-case basis the factual relationship which the secondary employer bears to the primary employer up against the intent of the Congress as expressed in the Act to protect employers who are 'wholly unconcerned' and not involved in the labor dispute between the primary employer, and the union." In resolving this question, the Board traditionally looks to such factors as the degree of common ownership; common control of daily activities, including labor relations policies; the extent of integration of business operations; and the dependence of one employer on the other for a substantial portion of its business. No one of these factors is, in and of itself, sufficient to, either confirm or deny the alleged neutral status of a party to a dispute. Rather, *all* factors must be weighed in order to assess accurately the nature of the parties' relationship.

In *Graphic Arts International*, 208 NLRB 37, 39 (1973), the Board adopted the following conclusion of the Judge:

The "ally" principle has been applied where one employer is performing "struck work" for the primary employer, and, where, as here, the relationship derives from a combination of circumstances indicating that the employers are engaged in an integrated, straightline operation. Factors considered most persuasive by the Board and the courts in determining whether two or more corporations are engaged in an integrated, straight-line operation are the degree of common ownership of the employers involved, the common control of the day-to-day operations including labor relations, the extent of integration of the business operations, and the dependence of one employer on the other for a substantial portion of the business.

In *Teamsters Local 560*, 248 NLRB 1212, 1213 (1980), the Board expounded on what it deemed the underlying purpose of Section 8(b)(4):

Two statements by Senator Taft have been taken to summarize the legislative history of Section 8(b)(4) with respect to what constitutes a neutral employer or, as the Act now reads, "person." This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is *wholly unconcerned* in the disagreement between an employer and his employees. [Emphasis supplied.] [93 Cong.Rec. 4198 (1947), reprinted in II Leg. Hist.1106 (NLRA, 1947).]

Later, in a post-legislative reflection on the purpose of the provision, Senator Taft stated:

The secondary boycott ban is merely intended to prevent a union from injuring a third person who is not involved in any way in the dispute or strike .... It is not intended

to apply to a case where the third party is, in effect, in cahoots with or acting as a part of the primary employer. [95 Cong. Rec. 8709 (1949).]

5 Out of Senator Taft's "wholly unconcerned" statement, a Federal district court, and then the Board, devised what came to be called the "ally" doctrine. It will suffice here to say that this doctrine developed into two branches, one involving cases where an employer's neutrality was alleged to be compromised by his performance of "struck work," and another involving cases where neutrality was contested on the ground that the boycotted employer and the primary employer were a single employer or enterprise.

10 Although the record shows that some packages for freight from DHLNH, and specifically from PVD, were occasionally handled at the Boston and Westborough facilities, the record herein does not support a finding that DHL Express performed struck work of DHLNH during the hours of the picketing by Local 251 on the morning of May 1, 2018. Consistent with existing Board precedent the Respondent Unions have not established that DHL Express was an engaged as an ally of DHLNH, and therefore the Unions failed to establish on this record that DHL Express was not a neutral employer in Local 251's labor dispute with DHLNH.

20 Based on the above, I find that the Respondents have failed to establish on this record that DHL Express was not a neutral to the labor dispute between DHLNH and Local 251 on May 1, 2018 on any of the presented theories.

25 *Respondent, Teamsters Local 25 by Business Agent John Murphy, violated Section 8(b)(1)(A) by telling DHL Express employees at Boston that they were authorized to honor the Local 251 picket line.*

30 When business agent Murphy told DHL Express employees that they had a right not to cross the Local 251 picket line, it was a signal to these employees not to do so. Such statements by Murphy, an agent of Local 25, violate Section 8(b)(1)(A) when they encourage employees to engage in secondary coercion. See, *Los Angeles Bldg. & Constr. Trades Council*, 215 NLRB 288, 290 (1974), *Teamsters Local 122*, 334 NLRB 1190, 1191 and n. 8 (2001). Here, although Murphy had reason to suspect that his advice to employees was accurate, under the circumstances of having found on this record that DHL Express was not shown to be a nonneutral in the DHLNH labor dispute with Local 251, I find here that the statement was 35 unlawful, regardless of Murphy's intent.

*Local 251 did not violate Section 8(b)(1)(A) by inhibiting the access of the JFK airport truck to the DHL facility in Boston.*

40 Although I have found that Local 25 business agent Murphy told DHL Express supervisor Perry that the unions would not let the truck from JFK access the Boston station and that the truck in fact entered the facility with a police escort after a short delay, the record does not persuade me that the driver was impeded by the Unions from accessing the facility. The General Counsel failed to establish that the driver was coerced by the picketing to delay entering the facility. In particular, the Government's failure to identify the driver or to call the driver to 45 testify about what, if anything, he had been told by union representatives at the worksite or why he temporarily waited outside the DHL Express gate convinces me that nothing untoward

occurred. Testimony that certain union representatives were observed to be near the truck while it was parked outside the gate is simply insufficient to establish that Local 251 representatives coerced the driver into delaying passage of the truck from JFK through the DHL Express gate. The driver's actions in these circumstances were not established to be the result of unlawful  
 5 pressure by Local 251. Further, I decline to find that Local 25, by Murphy or any other representative violated the Act did so because the General Counsel did not allege this violation against Local 25 until its post-trial brief and I find that Local 25's culpability was not fully litigated. Had Local 25 been on notice that it was being charged with such a violation, it may have elicited testimony from Murphy or others about this incident.

10 I also find that the General Counsel has not established a violation of the NLRA with regard to the Unions' blocking of Wilfred Perry. The General Counsel has not established that any employee not involved in blocking Perry was aware of either incident, thus I deem that coercion of an employee has not been proved on this record.

15 *The violations herein were not de minimis.*

*Local 251 did not demonstrate that it had a good faith mistaken belief as to DHL Express' neutrality.*

20 Assuming that there is a de minimis defense for secondary picketing, I find there is no such a defense available for the Unions in this case. If for no other reason, by delaying the transportation of packages to Manchester, the picketing of the Boston station was not de minimis. Although, DHL Express was able to complete all work at Westborough scheduled for  
 25 May 1, 2018 on May 1, it had no way of knowing that would be the case while the picketing was ongoing. This required DHL Express to plan accordingly. On this basis, I find that violations at Westborough were also not de minimis.

30 Respondent Local 251 did not have a good faith mistaken belief that DHL Express was not a neutral employer. There were no facts with regard to which Local 251 had such a good faith mistaken belief. At best Local 251 and Local 25 had good faith mistaken beliefs as to the law as it applied to DHL Express, which is an insufficient defense to secondary picketing, *Linoleum Union Local 1236*, 180 NLRB 241, 243 (1969).

35 *Local 25 violated the Act by telling rank and file employees/unit members to tell Board Agents that they should contact Local 25's attorney before speaking to the employee.*

40 The record indicates that unit employee David Grasso initiated contact with Local 25 as to how to respond to an inquiry from the Board. I would be inclined to dismiss this complaint allegation if the only evidence were that the Union was responding to inquiries from members. However, Local 25's counsel informed the General Counsel that:

45 We've instructed everybody that receives a phone call from the National Labor Relations Board to ignore it. You want to speak to anybody we represent, call me first.

GC Exh. 9B.

It is a violation of Section 8(b)(1)(A) for a Union to interfere with an employee's or member's right to assist in a NLRB investigation, *Paperworkers Local 710 (Stone Container)*, 308 NLRB 95 at 95, 97 and 99 (1992). A statement suggesting to rank and file employees/members that they should ignore a Board inquiry and/or only agree to talk to a Board agent in the presence of counsel necessarily restrains and coerces employees in their right to provide evidence to Board agents or to testify in Board proceedings, *Jack in the Box Distribution Center*, 339 NLRB 40, 54 (2003).

## CONCLUSIONS OF LAW

The Respondents, Teamsters Local 251 and Teamsters Local 25 are not jointly liable for the unlawful acts described below.

Respondent Teamsters Local 251 violated Section 8(b)(4)(B) of the Act on May 1, 2018 by picketing the Boston and Westborough, Massachusetts facilities of DHL Express, a neutral employer in Local 251's dispute with DHLNH, DHL Express's subcontractor at the DHL Providence, Rhode Island station. An object of Local 251's conduct was, at least in part, to force or require DHL Express and other persons to cease handling or otherwise dealing in the products or services of, and to cease doing business with DHLNH.

Respondent Teamsters Local 25, by business agent John Murphy, violated Section 8(b)(1)(A) on May 1, 2018, by telling DHL Express employees at DHL Express's Boston facility that they were authorized to honor the Local 251 picket line--thus signaling to Local 25 members that they should not cross the Local 251 picket line.

Respondent Local 25 violated Section 8(b)(1)(A) by informing its members to ignore phone calls from Board agents and to talk to Board agents only after consulting with union counsel.

The Respondents did not engage in any other violations alleged in the complaint, as amended.

## REMEDY

Having found that the Respondent Local 251 violated Section 8(b)(4)(B) by picketing a neutral employer, I order that Local 251 cease and desist from such practices. Having found that Local 25 violated 8(b)(1)(A) by signaling to its members not to cross the Local 251 picket line and by instructing members to ignore inquiries from Board agents, I order that Local 25 cease and desist from such practices.

## ORDER

5 International Brotherhood of Teamsters Locals 251 and 25, their officers, agents, and  
representatives, shall

1(a). Teamsters Local 251 shall cease and desist from

10 (i) picketing at DHL Express Boston or Westborough locations in support of a labor  
dispute with DHLNH while DHL Express is a neutral employer in that labor dispute, with an  
object to coerce DHL Express to cease handling or otherwise cease dealing in the products or  
services of, or to cease doing business with DHLNH.

15 (ii) in any like or related manner restraining or coercing employees in the exercise of  
rights guaranteed them by Section 7 of the Act.

1(b). Teamsters Local 25 shall cease and desist from

20 (i) signaling to employees of DHL Express, while DHL Express is a neutral employer in  
a labor dispute between Local 251 and DHLNH, to withhold their services from DHL Express in  
support of Local 251's dispute with DHLNH.

25 (ii) instructing members to ignore inquiries from agents of the NLRB and/or instructing  
members to refer the Board agent to union counsel before responding to Board agents' inquiries.

(iii) in any like or related manner restraining or coercing employees in the exercise of  
rights guaranteed them by Section 7 of the Act.

30 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at the respective union offices of  
Teamsters Local 251 and Teamsters Local 25 copies of the attached notices marked "Appendix  
A, Notice to Members of Local 251" and "Appendix B, Notice to Members of Local 25".<sup>13</sup>  
Copies of the notices, on forms provided by the Regional Director for Region 1 after being  
35 signed by Respondent Teamsters Local 251's and Teamsters Local 25's authorized

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<sup>13</sup> If the facility involved in these proceedings and/or the union offices of the Respondents are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If any facility involved in these proceedings and/or union offices of the Respondents are closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means.

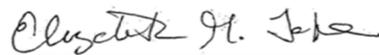
If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

representatives, respectively, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other  
5 electronic means, if the responsible Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the responsible Respondent(s) to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent(s) ceased representing employees at the facilities  
10 involved in these proceedings, the responsible Respondent(s) shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees represented by that Respondent at any time since May 1, 2018.

(b) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice for posting by DHL Express, if, willing, at all places where their  
15 notices to the public and patrons customarily are posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that  
20 each responsible Respondent has taken to comply.

Dated, Washington, D.C. November 20, 2020



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Elizabeth M. Tafe  
Administrative Law Judge

**APPENDIX A**

**NOTICE TO MEMBERS OF LOCAL 251**

**Posted by Order of the National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

**WE WILL NOT** picket DHL Express Boston or Westborough locations in support of our labor dispute with DHLNH while DHL Express is a neutral employer in that labor dispute, with an object to coerce DHL Express employees to cease handling products or withholding services, or to coerce DHL Express to cease dealing in the products or services of DHLNH or to cease doing business with DHLNH.

**WE WILL NOT**, in any like or related manner, violate Section 8(b)(4)(B) of the Act.

International Brotherhood of Teamsters, Local Union  
251 (Union)  
\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

10 Causeway Street, Room 601, Boston, Massachusetts 02222: Tel 617-565-6700  
Hours: 8:30 a.m. – 5:00 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/01-CB-219768](http://www.nlr.gov/case/01-CB-219768) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM  
THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY  
ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR  
COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE  
REGIONAL OFFICE'S COMPLIANCE OFFICER, (617) 565-6701.

**APPENDIX B**

**NOTICE TO MEMBERS OF LOCAL 251**

**Posted by Order of the National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

**WE WILL NOT** signal to employees at DHL Express’s Boston Massachusetts facility to withhold your services during picketing by Local 251 concerning its labor dispute with DHLNH, while DHL Express is a neutral employer in Local 251’s labor dispute with DHLNH.

**WE WILL NOT** tell you to ignore inquiries from the National Labor Relations Board or to tell you to contact our attorney before speaking with the Board agent.

**WE WILL NOT**, in any like or related manner, violate Section 8(b)(1)(A) of the Act.

International Brotherhood of Teamsters,  
Local Union 25 (Union)

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board’s Regional Office set forth below. You may also obtain information from the Board’s website:

[www.nlr.gov](http://www.nlr.gov).

10 Causeway Street, Room 601, Boston, Massachusetts 02222: Tel 617-565-6700  
Hours: 8:30 a.m. – 5:00 p.m.

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