BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

SOUTHWEST REGIONAL COUNCIL OF CARPENTERS AND
ITS AFFILIATED LOCAL UNION 1780, AFFILIATED WITH
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA

and CASE NO. 28-CD-272

IMAGE EXHIBITS SERVICES, INC

and

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS, LOCAL 631, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

BRIEF OF SOUTHWEST REGIONAL COUNCIL OF CARPENTERS AND ITS AFFILIATED LOCAL UNION 1780 FOLLOWING HEARING CONDUCTED UNDER NATIONAL LABOR RELATIONS ACT § 10(k), 29 U.S.C. § 160(k)

I. INTRODUCTION

The instant matter arises out of the efforts of the Southwest Regional Council of Carpenters ("SWRCC") and its affiliated Local Union 1780 ("Local 1780"), affiliated with the United Brotherhood of Carpenters and Joiners of America (collectively "Carpenters Union") to protect the scope of its work under a primary collective bargaining agreement with Image Exhibit Services, Inc. ("Image Exhibit" or "the Employer"), a Las Vegas trade show industry employer and the Charging Party in this matter. The Teamsters, Chauffeurs, Warehousemen and Helpers, Local 631, Affiliated with International Brotherhood of Teamsters ("Teamsters Union"), which formerly represented Image Exhibit's employees, still claims the subject work. Thus, a jurisdictional dispute exists, which must be resolved by the National Labor Relations Board ("Board") under Section 10(k), 29 U.S.C. Section 160(k).

It is undisputed, even by the Teamsters Union, that it was unable to provide Image Exhibit and other trade show employers with skilled employees to perform the needed "I&D", or install and dismantle, work on trade show exhibits. Because of this inability and the problems it caused within the Las Vegas trade show industry, the Las Vegas Convention and Visitors Bureau requested that the Carpenters Union and other unions become active in providing skilled labor to perform I&D work in the industry. The Carpenters Union answered the call, eventually entering into 16 primary agreements and approximately 43 secondary agreements with trade show employers.

The Carpenters Union had a secondary agreement with the Employer (the Teamsters Union having the primary agreement) from 2002 until September of 2007, several months after the Employer had terminated its collective bargaining agreement with the Teamsters Union and

signed a primary agreement with the Carpenters Union. Teamsters Union representatives knew of this shift, and neither objected nor filed any sort of charge with the Board.

Then in May of 2008, the Teamsters Union's Security Fund filed a lawsuit under the Employee Retirement Income Security Act of 1974 ("ERISA") against the Employer claiming continuing unpaid contributions and, thus, claiming jurisdiction over the work being performed by Carpenters Union members. After several months of litigation, Image Exhibit representatives told William Harris of the Carpenters Union that the Company was considering transferring the primary work back to the Teamsters Union in order to end the lawsuit. William Harris threatened to strike if this change occurred. Image Exhibit then filed the unfair labor practice charge that led to the instant proceeding, alleging a violation of Section 8(b)(4)(D) of the National Labor Relations Act ("the Act").

The Board should not proceed with the unfair labor practice charge, however, because the Carpenters Union is entitled to perform the work. Ample evidence in the record, and consideration of the appropriate factors, support this conclusion. In short, this small Employer that the Teamsters Union ignored, and that the Teamsters Union was unable to provide with skilled labor, notified the Teamsters Union that it was terminating its contract and entered into a primary contract with the Carpenters Union - which had been doing the work for several years under a secondary contract anyway. The Teamsters Union cannot rely upon its shrinking majority of the industry market share, because it is losing that foothold as a result of its admitted inability to provide skilled labor. The Employer's assignment of the work to the Carpenters Union should stand.

II. SUMMARY OF FACTS

A. DESCRIPTION OF THE WORK IN DISPUTE

The parties have stipulated that the work in dispute is the installation and dismantling of trade show exhibits in the convention industry. Tr. 10. Like many large cities, Las Vegas, Nevada, has an active convention industry, in which various companies or other purveyors will set up booths or "exhibits" at conventions and trade shows. Tr. at 55-56. Employers in the trade show industry will typically form one or both of two types of work: the general service contracting work that is typically done by one of the larger employers for the entire show, and the installation and dismantling of individual exhibits ("I&D" work), which is subcontracted from the individual exhibitors. Tr. 121. The general contracting work, performed by companies like GES or Freeman, involves obtaining and preparing the convention area, setting up the general registration areas and other common areas, and hauling and unloading the freight for the individual exhibits. Tr. 121.

The I&D work, done by smaller employers like Charging Party Image Exhibit (although the larger contractors do some I&D work, as well) involves opening and unpacking the exhibit, assembling and installing it, dismantling it after the show is over, and repackaging it for shipment. Tr. 55. The assembly of these exhibits is somewhat like "putting together a big Erector set," and entails following written plans from the client. Tr. 56. The plans may be so simple that they are set forth on an 8 ½ by 11 sheet of paper, or they may be so complex that they look more like house plans. Tr. 57.

B. HISTORY OF TRADE SHOW INDUSTRY REPRESENTATION IN LAS VEGAS

The Teamsters Union represented the majority (if not all) of the employees in the Las Vegas trade show industry for many years. Tr. 143. It is undisputed that the Teamsters Union was unable to meet the need of the area trade show employers for skilled employees. Tr. 137, 143-144, 169, 172-173. Employers had voiced complaints and concerns to Teamsters Union representatives for years about this issue, and the Union was well aware of the problem. Id. Over the years, the Teamsters Union had actually called the Carpenters Union hiring hall on numerous occasions seeking workers, and the Carpenters Union supplied them. Tr. 125. This all happened prior to the industry changes described below. Tr. 127. The workers supplied by the Carpenters Union would then be paid the rates set forth in the Teamsters Union agreements, and their fringe benefits were paid into the Teamsters Union trust funds. Tr. 126.

However, by late 2000 and early 2001, the Teamsters Union was still unable to remedy the situation. At this point, the Las Vegas Convention and Visitors Bureau stepped in and contacted several other unions, including the Carpenters Union, and asked them to participate in the trade show industry in order assist with the skilled labor shortage. Tr. 122. The Carpenters Union, which had affiliates representing trade show employees in areas other than Las Vegas (Tr. 124), stepped in and as early as September of 2001, had secondary agreements with GES and Freeman – two of the largest trade show employers in Las Vegas. Tr. 122-123. In 2001, the Teamsters Union also changed its agreements to allow for fringe benefits to be paid into the trust funds of whatever union supplied the worker, instead of automatically into the Teamsters Union trust funds. Tr. 137-138.

By the time of the hearing, the Carpenters Union had 16 primary agreements and approximately 43 secondary agreements with trade show employers in Las Vegas. Tr. 120. The primary agreements are all with I&D employers. Tr. 131. The 43 secondary agreements are with I&D employers and with general service contractors. Tr. 130-131. Up until the date of the hearing, the Teamsters Union representatives had failed to notice that the Carpenters Union had attained this share of the local market. Tr. 166, 186.

C. COLLECTIVE BARGAINING HISTORY AT IMAGE EXHIBIT

Image Exhibit first became signatory to a collective bargaining agreement with the Teamsters Union in approximately 1996. Tr. 65. The Teamsters Union was the only labor organization representing Image Exhibit's employees at this time. However, the Employer was having a very hard time obtaining skilled labor from the Teamsters Union, as discussed further below. Tr. 53-58.

In 2002, after the changes in the local trade show industry, the Employer entered into a secondary agreement with the Carpenters Union, whereby the Employer could call the Carpenters Union hall for workers if the Teamsters Union could not fill the demand. Tr. 28. The Teamsters Union agreement was therefore the "primary" agreement, and the Carpenters Union agreement was the "secondary" agreement. Tr. 26-28. ER Exhs. 1-2. From 2004 to 2007, the Employer performed I&D work on approximately 40 to 50 shows per year, and had to call the Carpenters Union hall on approximately half of those shows. Tr. 28-29.

However, this arrangement was still unsuccessful for the Employer. As discussed further below, Image Exhibit Vice President Anthony McKeighan testified that the Employer consistently experienced problems getting its requests for workers fulfilled by the Teamsters

Union hiring hall, and when the Teamsters did send workers out, they were frequently unqualified. Tr. 53-58.

In addition, after a business partner left the Employer, taking his cash reserve with him, the Teamsters Union required the Employer to post a payment bond. Tr. 31. However, the Employer was unable to obtain a bond at this point, due to problems with the IRS. Tr. 31. The Employer had attempted unsuccessfully in 2002 to get the Teamsters Union to renegotiate this requirement, but was told by business agent Milan Dobrijevich that "we were too small, that there wasn't going to be a negotiation with us on this, and that we just needed to give it up." Tr. 69-70. The Employer was still unable to obtain a bond, however, and in October of 2006, Teamsters Union representative Mike Goodall informed Image Exhibit partner Scott Loveland that if the Employer didn't have a bond in place at the beginning of 2007, the Teamsters Union would no longer provide the Employer with labor. Tr. 32, 105, 107.

The Employer wished to either renegotiate this bond requirement or terminate the contract with the Teamsters Union, and on March 28, 2007, delivered a letter to the Teamsters Union notifying it of the desire to renegotiate or terminate the contract. Tr. 35-36; ER Exh. 3. This letter fell within the parameters of the termination provision of the Teamsters Union/GES Exposition Services, Inc. Agreement (see TU Exh. 4, p. 31; TU Exh. 6, p. 50), to which the Employer was bound by operation of its short form agreement, but it did not fall within the termination window in the short form agreement itself (TU Exh. 1, p. 2). The Employer received no response to this letter from the Teamsters Union. Id.

However, Teamsters Union representatives indicated to the Employer that the contract between them was no longer in effect. Specifically, in May of 2007, at the International

Shopping Center show, Image Exhibits had Carpenters Union members working on the trade show floor when a couple of Teamsters Union representatives arrived and attempted to stop the Carpenters from doing the work. Tr. 42. The Teamsters representatives made some calls back and forth to undisclosed individuals, and began to fill out a grievance, but then said that the Teamsters had no jurisdiction and walked away. Tr. 40. No grievance wound up being filed against the Employer arising out of this situation. Tr. 40.

Then in early August 2007, at the Western Show Association trade show, Teamsters Union business agent Laura Simms[1] and a Teamsters Union steward stopped at a booth being constructed by Image Exhibit employees obtained from the Carpenters Union and disputed that Teamsters were not being used. Tr. 37. Mr. McKeighan came down to the show, explained to Ms. Simms about his termination letter and unsuccessful attempts to get a response from the Teamsters, and Ms. Simms placed a call to the Union hall. Tr. 38. After the call, Ms. Simms told Mr. McKeighan, "The reason that nobody has called you back is because you are not signatory to the contract anymore, and they don't feel that they are bound to talk to you." Tr. 38. Ms. Simms then gave Mr. McKeighan the telephone number for Cheryl Schmit, the Teamsters Union Office Supervisor whom Simms said was the "right-hand person" to Wayne King, the Secretary/Treasurer of the Teamsters Union. Tr. 39, 63-64, 134. Mr. McKeighan twice left messages for Ms. Schmit, but she failed to call him back, as well. Tr. 39.

Approximately two weeks later, Teamsters Union representatives stopped Image Exhibits

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[1]Teamsters Union Secretary/Treasurer Wayne King asserted that Ms. Simms was an *assistant* business agent with no authority to abrogate agreements (Tr. 146-147), but he was unaware whether employers were informed of this limitation on her authority via her business card (Tr. 151).

employees from working at a show at the Sands Expo on the grounds that the Employer wasn't using Teamsters and wasn't signatory to the Teamsters contract. Tr. 39, 107-9. The Teamsters Union was then able to get Freeman to provide its Teamsters employees to do the work, and Freeman billed Image Exhibits' client for the cost. Tr. 40, 107-9. The Teamsters' stated reason for insisting upon Freeman's workers instead of the Employer's was that the Employer was not signatory with the Teamsters Union. Tr. 108-9. The Teamsters did not file a grievance against Image Exhibits arising out of this incident, which was likely due to the fact that the Teamsters Union did not consider Image Exhibits to be bound by a contract any longer. Tr. 40, 108-9.

As such, on September 19, 2007, the Employer sent letters to the Teamsters Union and to the Teamsters Pension Trust memorializing that the Employer had been given notice by the Teamsters Union that it was no longer signatory, and that the Employer would no longer be making contributions into the Teamsters trust funds. Tr. 43; ER Exhs. 4-5. The Employer received a response only from the Teamsters Pension Trust, requesting information in order to assess withdrawal liability. Tr. 47, ER Exh. 7.

On September 28, 2007, the Employer proceeded to enter into a primary agreement with the Carpenters Union to perform the I&D work. Tr. 45; ER Exh. 6; CU Exh. 2. The term of this agreement is September 1, 2007 to August 31, 2011. From this point on, Image Exhibits employed only Carpenters to perform the I&D work. Tr. 48.

Teamsters Union representatives have been aware of this shift, and have not objected to it. Specifically, in February of 2008, Teamsters Union business agent Tim Koviak approached an Image Exhibit installation at a trade show, where the Employer was using all Carpenters. Tr. 48-50. Mr. Koviak asked how things were going, and Mr. McKeighan responded that "things were

going great with these guys." Tr. 48. Mr. Koviak asked if the Carpenters were "taking care of" the Employer, and Mr. Keighan responded that they were. Tr. 48. The two men then proceeded to have a pleasant conversation, and Mr. Koviak left. Tr. 48. Mr. Koviak did not dispute this exchange in his testimony. Tr. 183-197.

In October or November, 2007, the Teamsters Union did file a grievance against the Employer for failing to have the required bond. TU Exh. 7. The Employer's written response to this grievance was that, according to certain Teamsters Union representatives, the Employer is not signatory to a Teamsters Union agreement. Id. This grievance represents the only action taken by the Teamsters Union itself against the Employer. The Teamsters Union never filed a charge with the Board or even filed its own action to enforce the collective bargaining agreement that it now claims is still valid. The Teamsters Union has continued to sit idly by, not paying attention to this "small employer," and may not now challenge the Carpenters Union primary agreement because the 6-month statute of limitations period under Section 10(b) has passed. Machinists Local Lodge 1424 v. NLRB (Bryan Mfg. Co.), 362 U.S. 411 (1960).

Since making this change, the Employer has noticed a significant improvement in its business. Specifically, the workers supplied by the Carpenters Union hall require less supervision and perform their work faster than the Teamsters Union labor had been able to do. Tr. 54-55. This has resulted in the Employer being able to take on 15 to 20 percent more business than it had been able to do under the Teamsters Union contract, as further explained below. Tr. 58.

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D. THE INSTANT JURISDICTIONAL DISPUTE

As noted above, Teamsters Union representatives were clearly aware that the Employer had terminated the contract with the Teamsters and that the Carpenters Union was now supplying the labor on the Employer's jobs. They did not object to this change, nor did they dispute that the Employer had terminated its collective bargaining agreement with the Teamsters Union. Nonetheless, on May 22, 2008, the Teamsters Union Security Fund filed suit against the Employer seeking an audit and unpaid benefit contributions. ER Exh. 8. A key contention by the Fund in this suit is that the Employer is still bound to the Teamsters Master Agreement. See ER Exh. 8, ¶¶ 4, 5, 9, 10, etc.

After months of expensive litigation, the Employer considered giving the disputed work back to the Teamsters in order to avoid spending more money on legal bills. Tr. 51. In October of 2008, Image Exhibit partner Scott Loveland called Carpenters Union representative William Harris and informed him of this. Tr. 51-52. Harris then sent a letter to the Employer, dated October 22, 2008, stating that if the Employer reassigned the work to the Teamsters Union, the Carpenters would strike and picket in order to protect their work. Tr. 52; ER Exh. 9. Thereafter, on November 7, 2008, the Employer filed an unfair labor practice charge against the Carpenters Union, alleging a Section 8(b)4)(D) violation. GC Exh. 1(b). The Regional Director then issued a Notice of Hearing in this matter for a determination under Section 10(k) of the Act. GC Exh. 1(d).

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III. ARGUMENT

A. APPLICABILITY OF THE ACT

Before the Board will proceed with making a determination in a jurisdictional dispute, there must be reasonable cause to believe that Section 8(b)(4)(D) has been violated, and there must be no agreed-upon method for the voluntary adjustment of the dispute between the parties. See, e.g., Electrical Workers Local 3 (Slattery Skanska), 342 NLRB No. 21, at *3 (2004). There is no dispute that there exists reasonable cause to believe that the Act has been violated in this case. Tr. 11-12 (stipulations by the Employer and Carpenters Union; Teamsters Union has "no knowledge of it"). While the Teamsters Union would not stipulate that there is no agreed-upon method for the voluntary adjustment of the dispute between the parties (Tr. 11), it failed to put on any evidence of such an agreed-upon method.[2]

Specifically, there is a provision in the Teamsters Union master agreement with GES Exposition Services, Inc., regarding the resolution of jurisdictional disputes (see TU Exh. 6, p. 66), but it does not purport to, nor can it, bind the Carpenters Union, since the Carpenters Union is not a party to that agreement. Neither the Carpenters Union primary agreement with the Employer, nor the Carpenters Union secondary agreement with GES Exposition Services, Inc., contains a provision regarding the voluntary adjustment of jurisdictional disputes. See Tr. 124-125; CU Exhs 1 and 6. In fact, the Teamsters Union never contacted the Carpenters Union to utilize any such method for the resolution of this jurisdictional dispute. Tr. 124. As such, the

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[2]Secretary/Treasurer Wayne King offered vague testimony that "several years back," Teamsters Union General President Hoffa and Carpenters Union General President McCarron "made some kind of an agreement, but it was a no-rate [no raid] agreement, basically." Tr. 147. Mr. King testified that he knew of no specifics of this agreement. Id.

Board should proceed with making a determination in this case.

B. GENERAL STANDARDS APPLIED IN SECTION 10(K) DETERMINATIONS

In making jurisdictional awards under Section 10(k), the Board will decide each case on its facts, and will consider all relevant factors, including: the skills and work involved; certifications by the Board; company and industry practice; agreements between unions and between employers and unions; awards of arbitrators, joint boards, and the AFL-CIO in the same or related cases; the assignment made by the employer; and the efficient operation of the employer's business. Machinists Lodge 1743 (J.A. Jones Constr. Co.), 135 NLRB 1402 (1962). The Board will also consider additional factors, such as the availability of a union-operated training center. Typographical Union No. 53 (Sherwin-Williams Co.), 224 NLRB 583 (1976). The key factor in the Board's analysis is the employer's preference. See, i.e., Longshoremen (ILWU) Local 50 (Brady-Hamilton Stevedore Co.), 244 NLRB 275 (1979). As the Ninth Circuit Court of Appeals has noted, the Board's Section 10(k) awards coincide with the employer's preference in virtually every case. NLRB v. Longshoremen (ILWU) Local 50 (Brady-Hamilton Stevedore Co.), 504 F.2d 1209 (9th Cir. 1974), cert. denied 420 U.S. 973 (1975).

C. THE PREPONDERANCE OF THE RELEVANT FACTORS WEIGH IN FAVOR OF A DETERMINATION THAT THE CARPENTERS UNION IS ENTITLED TO PERFORM THE DISPUTED WORK.

1. Employer Preference

As Tony McKeighan explained, the Employer in this case strongly prefers the assignment of the disputed work to the Carpenters Union. Tr. 53-58. The Teamsters Union for years failed to provide skilled labor, which hampered the Employer's efforts to increase efficiency. Tr. 54.

Mr. McKeighan himself had to micro-manage the employees referred by the Teamsters Union hall because they simply did not have the training or skills necessary to construct the exhibits according to the required client specifications. Tr. 54-55.

Since assigning the work solely to the Carpenters Union, the Employer has been able to expand and take on more jobs than it had in previous years. Tr. 54-55. As Mr. McKeighan put it:

> [I]n the past, I would limit the number of jobs that we would take on, because of the quality of labor that I knew I was going to receive from the Teamsters Union. We -- we didn't always receive the number of people that we needed, and we certainly didn't receive the number of people that were qualified to install or dismantle a trade show exhibit in our opinion. And, so, the amount of stress that it required on me to make sure that our clients were being taken care of was more than I could handle at times, so on particular shows, I would limit the number of jobs that we would do, because I was worried about service, quality of service.

Tr. 57-58. After entering into the primary agreement with the Carpenters Union, the Employer no longer turned down projects, and was able to increase the number of projects it took on by 15 to 20 percent. Tr. 58 (approximately 20 additional projects, for a total in 2008 of 100 to 150 projects). As such, the record amply demonstrates that the Employer preference favors awarding the work to the Carpenters Union.

2. Skills And Work Involved

As noted above, the disputed work entails reading plans from the Employer's clients, and assembling trade show exhibit booths according to those specifications. Tr. 55-57. As Mr. McKeighan testified, the skills involved in this work are essentially construction skills, and in his experience, employees obtained from the Carpenters Union possess these skills to a much greater degree than employees sent by the Teamsters Union. Tr. 53-58. This conclusion is supported by

the fact that the Employer has been able to take on a greater number of projects since signing its primary agreement with the Carpenters Union. Tr. 54-58.

The record is replete with testimony indicating that the prevailing view among employers in the Las Vegas trade show industry has been that the Teamsters Union workers lacked the skills needed to perform the I&D work. Tr. 137, 143-144, 169, 172-173. As such, this factor weighs in favor of awarding the work to the Carpenters Union.

3. Efficient Operation of the Employer's Business

Mr. McKeighan testified that, because the workers from the Carpenters Union possess more of the relevant skills to perform the I&D work, he need not spend as much time supervising them as he spent supervising workers from the Teamsters Union. Tr. 53-58. This leads to a more efficient operation of the Employer's business, and, as noted above, has resulted in a 15 to 20 percent increase in the amount of business that the Employer has been able to take on since assigning the work to the Carpenters Union. Tr. 57-58. This factor, therefore, weighs strongly in favor of awarding the work to the Carpenters Union.

4. Board Certifications

The parties stipulated that there were no Board certifications to be considered in this matter. Tr. 10.

5. Company and Industry Practice

The Carpenters Union does not dispute that the Teamsters Union supplies a greater share of the I&D employees in Las Vegas than does the Carpenters Union. However, the issue is not so simple as that in this case, in light of the admitted difficulties that the Teamsters Union has historically experienced in supplying skilled workers. The industry practice has changed since

2001, with the Carpenters Union gradually taking on a greater share of the I&D work in Las Vegas. While the Teamsters Union has apparently been oblivious to this shift (Tr. 166), it offered no basis for disputing that it had occurred (Tr. 186)[3]. The Teamsters Union has approximately 130 signatory employers in the Las Vegas trade show industry, approximately 8 to 12 of which are general contractors and the rest of which are I&D employers. Tr. 175-176; 185. The Carpenters Union has 16 primary agreements with I&D employers, and approximately 43 secondary agreements with both I&D employers and general contractors. Tr. 120, 154-155. These numbers do not include the collective bargaining agreements that the Carpenters Union has with the numerous hotels in Las Vegas, which also host conventions. Tr. 156.

Like the industry practice, the Employer's practice has changed since 2001. Since entering into the secondary agreement with the Carpenters Union in 2002, the Employer has obtained a greater share of its employees from the Carpenters Union. Tr. 28-29. Again, this change in the Employer's practice is due solely to the Teamsters Union's historic inability to provide workers with the proper skills to perform the I&D work. Tr. 28-29, 54.

Therefore, although the industry practice and company practice was historically to award the I&D work primarily to the Teamsters Union, this practice has shifted on both counts. The shift is a result of the Teamsters Union's lack of requisite skill for this work, and this shift to the Carpenters Union has remedied the problems caused by the Teamsters Union's lack of skill -- at

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[3]Business Agent Tim Koviak:
Q: What is your estimate of the I&D companies that have primary contracts with the Carpenters on the trade show floors?
A: I would say, at best, three or four percent.
Q: And what do you base that on?
A: I only know of two or three of those companies, and I don't see them show to show.
See Tr. 186.

least insofar as this Employer is concerned. Thus, this factor actually favors awarding the disputed work to the Carpenters Union, not the Teamsters Union.

6. Collective Bargaining Agreements

Another factor to be considered by the Board is the existence of any collective bargaining agreements between the parties. It is undisputed that the Employer has entered into a primary agreement with the Carpenters Union for the disputed work. However, the Teamsters Union maintains that *its* primary agreement is still in effect on the grounds that the Employer failed to terminate this agreement in a timely manner.

As the record demonstrates, the Employer attempted to terminate its agreement with the Teamsters Union pursuant to the dates set forth in the "master" agreement with GES, which set forth the terms and conditions to be applied to I&D work. See TU Exh. 4, p. 31, TU Exh. 6, p. 50. The Employer did, however, fail to terminate within the different time window set forth in its short form agreement. See TU Exh. 1, p. 2.

The record indicates that the Teamsters Union acquiesced in the Employer's termination, however, and waived any argument that the termination was untimely. As discussed above, the Teamsters Union failed to respond to the termination letter or to the Employer's repeated telephone calls. Further, Teamsters Union agents made repeated statements to the Employer's representatives indicating that the Union deemed the agreement to be terminated. See, i.e., Tr. 37-39, 40-42. Lastly, Teamsters Union representatives were aware that the Employer had assigned the I&D work to the Carpenters Union, and not only failed to object, but indicated that there was no problem with this arrangement. Tr. 48.

Regardless, the validity of the Carpenters Union contract is indisputable at this point.

Machinists Local Lodge 1424 v. NLRB (Bryan Mfg. Co.), 362 U.S. 411 (1960). Even if the Teamsters Union is deemed to still have a valid collective bargaining agreement covering the disputed work, this simply results in this factor not favoring either union. See International Alliance of Theatrical and Stage Employees (Shepard Exposition Services, Inc.), 337 NLRB 721, 724 (2002) (finding that factor of collective bargaining agreements does not favor either union where both unions had contracts covering the work, and where both unions had pursued legal claims that their contract was violated by the assignment of work to the other union).

7. Award of Joint Boards, Arbitrators or the AFL-CIO

As discussed above, there is no informal or voluntary dispute resolution method in place between these parties.

8. Union-Operated Training Programs

Both unions provide union-operated training programs for the I&D work. The Carpenters Union offers a trade show certification program as part of its four-year apprenticeship program, and that may also be taken by journeymen who wish to begin working in the trade show industry. Tr. 123-124, 131-132, 197, 200. This program has several component classes, including a course on the building of the booths and customer satisfaction, rigging, fall protection, forklift, aerial lift, and CPR/first aid. Tr. 123-124, 131-132, 197, 200. Further, the United Brotherhood of Carpenters and Joiners International maintains a national certification program. Tr. 124. The Carpenters Union maintains a separate hiring hall and dispatch list just for the trade show industry employees. Tr. 121-122.

In 2007, the Teamsters Union made changes to its training program for I&D work, in order to address the concerns of industry employers about obtaining skilled labor. Tr. 137, 169.

Whereas previously the Teamsters just kept ranked lists (A, B, C) that they ran down in order to fill hiring hall requests (Tr. 135, 137), the Union now accepts people "who have knowledge and skill in the convention and trade show industry" and, after they complete some unspecified training requirements, the Union certifies them "skilled extra board workers" who will be sent out before "unskilled workers." Tr. 137-138, 169; 191-192. While the Teamsters Union has apparently been requiring that its apprentices complete a beginner's I&D and an advanced I&D course since 2001, its problems providing skilled labor to signatory employers continued after that. Tr. 53-58, 137, 143-144, 169, 172-173.

At best, this factor favors neither union. However, in light of the undisputed history of the Teamsters Union's training program failing to turn out qualified I&D workers, consideration of all relevant facts actually weighs in favor of awarding the work to the Carpenters Union.

IV. CONCLUSION

For all of the foregoing reasons, the Carpenters Union respectfully urges that the Board conclude that the Carpenters Union is entitled to perform the disputed work, and that the Board should not proceed with the underlying unfair labor practice charge.

DATED: January 8, 2009

DeCARLO, CONNOR & SHANLEY
A Professional Corporation

/s/ Kathleen M. Jorgenson

Attorneys for SOUTHWEST REGIONAL COUNCIL OF CARPENTERS AND ITS AFFILIATED LOCAL UNION 1780, AFFILIATED WITH UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is DeCARLO, CONNOR & SHANLEY, a Professional Corporation, 533 South Fremont Avenue, Ninth Floor, Los Angeles, California 90071-1706.

On January 9, 2009, I served the foregoing document described BRIEF OF SOUTHWEST REGIONAL COUNCIL OF CARPENTERS AND ITS AFFILIATED LOCAL UNION 1780 FOLLOWING HEARING CONDUCTED UNDER NATIONAL LABOR RELATIONS ACT § 10(k), 29 U.S.C. § 160(k) on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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[X] (OVERNIGHT MAIL) I caused such envelope with postage thereon fully prepaid to be placed in a drop-off Fedex box at Los Angeles, California.

Executed on January 9, 2009, at Los Angeles, California.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

/s/ Nelly Caywood