

District No. 15, International Association of Machinists and Aerospace Workers, AFL-CIO and Hudson General Corporation and Local 851, International Brotherhood of Teamsters, AFL-CIO. Case 29-CD-460

August 14, 1998

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN
AND HURTGEN

The charge in this Section 10(k) proceeding was filed on September 1, 1995, by Hudson General Corporation (Hudson or the Employer), alleging that the Respondent, District No. 15, International Association of Machinists and Aerospace Workers, AFL-CIO (District 15), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Local 851, International Brotherhood of Teamsters, AFL-CIO (Local 851). The hearing was held on December 18, 1995, and February 13, 1996, before Hearing Officer Kevin R. Kitchen.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Hudson General Corporation is a Delaware corporation with its principal place of business at 111 Great Neck Road, Great Neck, New York. Hudson provides services to airlines, airports, Governments, and governmental authorities, both in the State of New York and outside of New York State. Hudson annually furnishes services valued in excess of \$50,000 directly to business firms located outside the State of New York, and it receives goods in excess of \$50,000 shipped directly from points located outside the State of New York. We accordingly find that Hudson is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find, based on the stipulation of the parties, that District 15 and Local 851 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

1. The employer performs ground handling and cargo functions at LaGuardia Airport

The Employer provides various services for airlines at LaGuardia Airport in New York City, including snow removal, employee busing, passenger busing, cargo warehousing, aircraft ground handling, aircraft cleaning, aircraft refueling, and staffing of ground transportation

information counters. The Employer's operations fall into two general categories: ground handling operations and cargo operations.

Since at least 1983, the Employer has performed ground handling operations at LaGuardia Airport. Ground handling work is performed by ramp employees. The ramp employees employed by the Employer are represented by District 15. The most recent collective-bargaining agreement between District 15 and the Employer is effective from March 1, 1995, to February 29, 2000.

Since about June 1987, the Employer has conducted cargo operations at LaGuardia Airport. The work of the cargo operations is performed by cargo employees. The cargo employees employed by the Employer are represented by Local 851. The most recent collective-bargaining agreement between Local 851 and the Employer is effective from December 1, 1995 to November 30, 1999.

2. Mail handling at LaGuardia Airport

The United States Postal Service operates a post office at LaGuardia Airport. From 1983 to 1985, employees of the Postal Service sorted incoming mail from arriving airplane flights, and sorted outgoing mail for transport on departing airplane flights. In 1985, the Postal Service notified airlines operating at LaGuardia Airport that the Postal Service would no longer be responsible for the sorting of mail, and that the individual airlines would have to assume the responsibility for the sorting of inbound or outbound mail at the airport. Thereafter, in 1985, several airlines requested that the Employer perform their mail handling operations. The Employer at this time was awarded contracts from several airlines to perform mail sorting, and the transportation of mail to and from aircraft.¹ The Employer assigned this mail sorting and transportation work to its ramp employees who are represented by District 15.

3. The Employer secures a contract with Air Canada

In 1988, Air Canada contracted with the Employer to perform cargo work and, in addition, to perform the sorting and transportation of mail. The Employer assigned the Air Canada cargo work to its cargo employees represented by Local 851. The Employer assigned the Air Canada mail sorting and transportation work to its ramp employees represented by District 15. The Employer additionally assigned on an "as needed basis" the Air Canada mail sorting and transportation work to its cargo employees represented by Local 851. Accordingly, employees represented by District 15 and employees represented by Local 851 on occasion worked together in per-

¹ The record does not establish which airlines awarded contracts to the Employer during this time period.

forming the Air Canada mail sorting and transportation function.

4. Events of 1991

In June 1991, the Employer lost most of its contracts to perform ground handling work at LaGuardia Airport. The Employer did retain its contract with Air Canada to perform cargo and mail sorting and transportation functions. The Employer at this time reassigned the Air Canada mail work to the cargo employees represented by Local 851. This was a change in the Employer's previous practice from 1988 to June 1991 of assigning the Air Canada mail work to employees represented by District 15, and of only assigning Air Canada mail work on an as needed basis to employees represented by Local 851.

5. Events of 1993

In November 1993, the Employer obtained a contract with the US Air Shuttle at LaGuardia Airport to perform ground handling duties, cargo work, and to handle mail sorting and transportation. The Employer assigned the US Air Shuttle cargo work to its cargo employees represented by Local 851. The Employer assigned the US Air Shuttle ground handling and mail work to employees represented by District 15.

6. Events of 1994

About August 1994, the Employer was awarded a contract to sort and transport mail for Delta Airlines. The Employer assigned the Delta Airlines mail work to employees represented by Local 851. The Employer's vice president, Altizio, testified that the decision to assign the Delta mail work to employees represented by Local 851 was based, in part, on two considerations. First, the Employer had ceased performing cargo operations for the US Air Shuttle, and the Employer thus took those available cargo employees represented by Local 851 and assigned them to perform the Delta Airlines mail work, thereby avoiding the necessity of layoffs for those employees. Second, the employees represented by Local 851 were located in the Employer's cargo operations at hangar 7, which is in close proximity to the post office.

In addition, the Employer assigned the Delta Airlines mail sorting and transportation work on an as needed basis to its employees represented by District 15. Employees represented by District 15 and employees represented by Local 851 thus would have occasion to work together in performing the Delta Airlines mail sorting and transportation function.

In November 1994, the Employer was awarded a contract to provide ground handling services to the Delta Shuttle, as well as the sorting and transportation of mail. The Employer assigned the Delta Shuttle ground handling and mail work to employees represented by District 15. The record establishes that the work performed by the Employer for Delta Airlines and the work performed for the Delta Shuttle are distinct operations based on

separate contract awards. The Employer's vice president, Altizio, testified that "[t]he Delta Shuttle operation is completely separate from the regular main Delta terminal."

7. Events in 1995

By about May 1995, the Employer had lost most of its contracts to perform cargo work. The Employer's cargo operations had been based in space leased in hangar 7. The Employer accordingly terminated its lease and closed its cargo operations in hangar 7. In anticipation of the closure of its cargo operations, the Employer reassigned the remaining employees located at hangar 7, who were represented by Local 851, to perform either Delta Airlines cargo work or mail work.

At the time the hearing was conducted in December 1995 and February 1996, the Delta Airlines mail work was being performed by 12 employees. The Employer states in its brief that of the 12 employees currently performing Delta Airlines mail work, 4 employees are represented by Local 851, and 8 employees are represented by District 15. The record establishes that until May 1995, all 12 employees performing Delta Airlines mail work were represented by Local 851. Altizio testified that since May 1995, if one of those 12 positions became vacant for any reason, the Employer filled that position with an employee represented by District 15. Further, at the time of the hearing, employees represented by District 15 performed the remainder of the Employer's mail work other than that of Delta Airlines.²

8. Local 851 seeks arbitration and District 15 threatens to picket the Employer

On May 24, 1995, Local 851 filed a demand for arbitration with the American Arbitration Association, claiming that Hudson had violated the collective-bargaining agreement with Local 851 by the "assignment of bargaining unit work to nonbargaining unit members."³ Thereafter, by letter dated August 24, 1995, to the Employer from District 15 Business Representative Conigliaro, District 15 noted the demand for arbitration filed by Local 851, and advised the Employer:

We will not quietly stand by while Local 851 tries to put our members out of work. Therefore, you should be advised that if you process arbitration or take any other action to assign the work that our members are performing to Local 851 members, District 15 will picket your facilities. If picketing is not successful, we

² The record shows that at the time of the hearing, the Employer had contracts to perform mail work at LaGuardia Airport for Delta Airlines, Delta Shuttle, and US Air Shuttle. The record does not specifically establish that the Employer had at that time other mail handling contracts at LaGuardia Airport.

³ The record indicates that Local 851 filed a grievance before making its demand for arbitration.

intend to strike to protest your conduct which threatens to eviscerate the District 15 contract.

Thereafter, District 15 advised the Employer by letter dated October 31, 1995, that it “withdraws any threat of economic action regarding work historically performed by [District 15] . . . [h]owever, please rest assured that District 15 [of the IAM] will take all legal actions available to us to protect work that we believe is historically ours.”

At the hearing on February 13, 1996, counsel for District 15 reiterated the withdrawal of the threat to picket or strike the Employer over the disputed work. Counsel for District 15 stated that despite the withdrawal of its threat, however, District 15 still maintained its claim to the disputed work and wanted to perform the disputed work.

B. *The Work in Dispute*

The Board’s notice of hearing in this proceeding stated that the dispute concerns the assignment of the following work:

The sorting of outbound bags and containers of U.S. mail and the transporting of that mail to and from the aircraft ramp areas and the U.S. Postal facility at LaGuardia Airport, New York, New York.

At the hearing, the hearing officer asked each of the parties to state their position as to whether the notice of hearing accurately described the work in dispute. Counsel for the Employer stated that the description of the work in dispute set forth in the notice of hearing was acceptable to the Employer.

Both counsel for Local 851 and counsel for District 15 disagreed, however, with the statement of the work in dispute as described in the notice of hearing. Counsel for Local 851 sought to amend the description of the work in dispute set forth in the notice of hearing. Counsel for Local 851 stated that the work sought by Local 851 was the sorting and transportation of mail for Delta Airlines only, and not mail work performed by the Employer for the Delta Shuttle or any other airline.

Counsel for District 15 likewise stated that he would add the following phrase, set forth in italics, to the language in the notice of hearing:

The sorting of outbound bags and containers of U.S. mail and the transporting of that mail to and from the aircraft ramp areas and the U.S. Postal facility *performed for Delta Airlines Flight Center Operations at LaGuardia Airport, New York, New York.*

The record establishes that the “Delta Airlines Flight Center Operations” encompasses Delta Airlines only, and not the Delta Shuttle. The positions of both Unions at the hearing accordingly establish agreement by them that the only work in dispute in this proceeding is the sorting and transportation of mail performed by the Employer for Delta Airlines. Further, although at the hearing the Employer agreed with the description of the disputed work set forth in the notice of

hearing, it stated in its brief to the Board that “the work in dispute involves the sorting and transportation of mail for Delta Airlines at LaGuardia Airport’s U.S. Postal Facility.” Accordingly, we find that the description of the work in dispute set forth in the notice of hearing is too broad, and we narrow it to encompass only the sorting and transportation of mail for Delta Airlines.⁴

C. *Contentions of the Parties*⁵

1. The Employer

The Employer contends that the threat by District 15 to picket or strike the Employer over the disputed work is sufficient basis for the Board to have reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. The Employer argues that District 15 has consistently maintained its desire to perform the work in dispute, and that the withdrawal of the threat of unlawful activity by District 15 does not negate the jurisdictional dispute because District 15 has never disclaimed its interest in the disputed work. The Employer further maintains that the demand for arbitration filed by Local 851 constitutes a claim for the work in dispute. Accordingly, it asserts there are competing claims for the work at issue, and the work dispute is properly before the Board for determination pursuant to Section 10(k) of the Act.

The Employer asserts that the work in dispute should be awarded to employees represented by District 15 based on the Employer’s past practice of assigning mail work to ramp employees represented by District 15, the industry practice of assigning the sorting of mail work to ramp employees, the superior skills of the employees represented by District 15, employer preference, and efficiency of operations.

2. Local 851

Local 851 asserts that the Board should decline jurisdiction in this proceeding because the threat of unlawful activity has been withdrawn by District 15. Local 851 argues that there is no reasonable cause to find that Section 8(b)(4)(D) has been violated where the union preferred by the Employer threatens unlawful activity merely to invoke the Board’s jurisdiction under Section

⁴ We thus note that the circumstances of this case illustrate that the notice of hearing is not a dispositive statement of the work in dispute in a 10(k) proceeding. Rather, Sec. 101.33 of the Board’s Rules and Regulations provides that the Regional Director shall “issue a notice of hearing which includes a *simple statement of issues involved* in the jurisdictional dispute.” (Emphasis added.) The notice of hearing thus constitutes an initial, rather than a final, statement of the issues involved in the jurisdictional dispute. Accordingly, the precise nature of the work in dispute may itself as here be an issue at the 10(k) hearing. See, e.g., *Plasterers Local 80 (Jack Ebert & Co.)*, 226 NLRB 242 (1976). Indeed, the description of the work in dispute was at issue in the earliest stages of this proceeding; Local 851 advised the Regional Director by letter dated October 3, 1995, that it opposed the description of the work in dispute set forth in the notice of hearing dated September 26, 1995.

⁵ District 15 did not file a brief with the Board.

10(k) of the Act, and thereafter withdraws its threat. Local 851 maintains that “the circumstances of this case clearly suggest that both District 15 and Hudson General have attempted to manipulate the Board’s jurisdiction in order to get a Section 10(k) hearing, which the Board should not encourage by accepting jurisdiction in this matter.”

Local 851 further contends that in the event the Board accepts jurisdiction, the disputed Delta mail work should be assigned to employees represented by Local 851 because its collective-bargaining agreement mandates the assignment of the disputed work to employees represented by Local 851, because of the superior skills and qualifications of employees represented by Local 851, and based on considerations of safety. Local 851 further argues that the Employer’s past practice was to assign the Delta Airlines mail work exclusively to employees represented by Local 851, and that past practice remained until the Employer began improperly assigning that work in May 1995 to employees represented by District 15.

3. The Employer’s motion to strike

The Employer has filed a motion to strike those portions of the brief of Local 851 asserting that the Employer and District 15 have acted to manipulate the Board’s jurisdiction. The Employer asserts that these assertions should be stricken because there is no evidence in the record supporting the allegations of Local 851 that the threat of unlawful activity was a sham, or that the Employer and District 15 conspired in order to obtain a threat from District 15 violative of Section 8(b)(4)(D).

D. Applicability of the Statute

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the Act, two jurisdictional prerequisites must be met. First, the Board must find reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. Second, the Board must find that the parties have failed to agree on a method for voluntary adjustment of the dispute.

These jurisdictional prerequisites have been met in this case. First, both Local 851 and District 15 claim the work in dispute, and reiterated their claims at the hearing. Further, the invocation of arbitration procedures by Local 851 against Hudson constitutes a demand for the disputed work. See, e.g., *Iron Workers Local 8 (Selmer Co.)*, 291 NLRB 222 (1990).⁶ District 15 thereafter

⁶ Compare *Laborers Capitol Drilling Supplies*, 318 NLRB 809, 810 (1995) (in the construction industry, a union’s action through a grievance procedure or arbitration to enforce an arguably meritorious claim against a general contractor that work has been subcontracted in breach of a lawful union signatory clause does not constitute a claim to the subcontractor for work if the union does not seek to enforce its position by threatening or engaging in strikes, picketing, or boycotts).

Member Hurtgen does not pass on the validity of *Capital Drilling*.

threatened the Employer with picketing, or a strike, if the disputed work was assigned to employees represented by Local 851. Although District 15 subsequently withdrew this threat, that withdrawal does not negate the existence of a jurisdictional dispute when District 15 merely stated that it will not engage in unlawful conduct in regard to the assignment of the disputed work. *Operating Engineers Local 825 (GPU Nuclear)*, 282 NLRB 267, 269 (1986). Rather, the party asserting that a disclaimer has occurred which negates the existence of a jurisdictional dispute has the burden to prove “a clear, unequivocal, and unqualified disclaimer of all interest in the work in dispute.” *Teamsters Local 600 (Central Hardware)*, 290 NLRB 612, 613 (1988), quoting *Operating Engineers Local 77 (C. J. Coakley Co.)*, 257 NLRB 436, 438–439 (1981). As District 15 has consistently reaffirmed its claim to the disputed Delta Airlines mail work, the disclaimer of intention to engage in unlawful activity does not negate the instant jurisdictional dispute. This is not a case in which a party to a jurisdictional dispute effectively renounces its claim to the work in question, and the Board accordingly considers the dispute to be at an end and quashes the notice of hearing. *Operating Engineers Local 369 (Austin Co.)*, 255 NLRB 476, 478 fn. 1 (1981). We accordingly find reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated.

Second, the parties stipulated that they have not agreed on a method to adjust this dispute voluntarily. We thus find that the Board has jurisdiction to resolve this dispute.⁷

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962); *Asplundh Construction Corp.*, 318 NLRB 633 (1995).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

The recognition clause in the collective-bargaining agreement between the Employer and Local 851 provides:

⁷ There is no record evidence to support Local 851’s contention that the threat of unlawful activity by District 15 was a sham, or that the Employer and District 15 conspired to manipulate the Board’s jurisdiction in this proceeding. As these assertions thus do not affect our adjudication of this case, we find it unnecessary to strike those portions of Local 851’s brief setting forth these assertions.

The Company recognizes the Union as the Collective Bargaining Agent . . . of Cargo Agents and Customer Service Agents which the Company employs in connection with its Cargo Operations at LaGuardia Airport. Cargo operations is defined as those operations which include: receipt from shippers or their agents, breakdown, sorting, storage, and release to consignees or their agents of inbound freight; the receipt, weighing, sorting, storage, buildup and release to Air Carriers of outbound freight

Local 851 reasons that the mail at issue in this case constitutes “freight” within the meaning of the recognition clause, and that it accordingly has a contractual right pursuant to the recognition clause to perform the disputed Delta Airlines mail work.

We find that the record evidence does not support the contention of Local 851. Neither the recognition clause nor any other provision of the collective-bargaining agreement make any reference to mail handling. The collective-bargaining agreement does not define the terms “freight” or “cargo operations” as including mail handling work; indeed, the collective-bargaining agreement contains no definition of these terms. Local 851 accordingly has not established that these terms set forth in the recognition clause encompass the performance of mail handling work and that it is contractually entitled to perform the work in dispute.

District 15 does not contend that it is contractually entitled to perform the work in dispute based on the provisions of its collective-bargaining agreement with the Employer. Accordingly, the factor of collective-bargaining agreements does not favor an award of the disputed work to either group of employees.

Further, there was no evidence presented that either union has been certified by the Board as the collective-bargaining representative of any of the employees involved. This factor is likewise not helpful in determining the dispute.

2. Area practice

The Employer’s vice president, Altizio, testified that the practice in the New York City area at LaGuardia and John F. Kennedy (JFK) Airports is for ramp employees to perform the transport and sorting of mail. Altizio testified that the Employer’s competitors use ramp employees to perform mail handling duties.

The business agent for Local 851, Marcelles Jones, testified, in contrast, that both cargo and ramp employees at JFK Airport perform the transportation and sorting of mail. Indeed, Jones testified that only cargo employees perform the mail handling function for Pakistan International Airlines at JFK Airport.

In light of this conflicting testimony, we conclude that this factor—the general practice of airlines situated in the

New York City area—does not favor an award of the disputed work to either group of employees.⁸

3. Employer’s past practice

The Employer contends that its past general practice has been to assign mail handling work to ramp employees represented by District 15, and that this past practice favors an award of the disputed Delta Airlines mail work to employees represented by District 15. We find that the record evidence supports the Employer’s contention.

As set forth above, the historical background of this proceeding shows the following chronology: from 1985 to 1988 mail work for unspecified airlines was assigned to employees represented by District 15; from 1988 to 1991 Air Canada mail work was assigned to employees represented by District 15; in 1991 the Air Canada mail work was reassigned to employees represented by Local 851; in 1993 the US Air Shuttle mail work was assigned to employees represented by District 15; in 1994 the Delta Airlines mail work was assigned to employees represented by Local 851; in 1994 the Delta Shuttle mail work was assigned to employees represented by District 15; and since 1988 employees represented by each Union were assigned mail work on an as-needed basis.

In sum, the record shows that all mail handling work for the entire period from 1985 to 1991 was assigned to employees represented by District 15. Thereafter, from 1991 to 1994, the Employer’s four mail handling contracts referenced in the record were assigned evenly—two each—to employees represented by each union. The Employer’s past practice of assigning mail handling work thus establishes that more individual contracts to service individual airlines have been assigned to employees represented by District 15. Further, these assignments to employees represented by District 15 cover the majority of the time period at issue in this proceeding. Significantly, employees represented by District 15 exclusively performed mail handling work for an entire 6-year period, while employees represented by Local 851 have never exclusively performed mail handling work. The record evidence accordingly confirms that the Employer’s past general practice has been to award mail handling work in the first instance exclusively to employees represented by District 15, and only in certain limited instances thereafter to employees represented by Local 851. We thus find that this factor favors an award of the disputed work to employees represented by District 15. The dissent focuses on the work performed for Delta Airlines. Although the description of the work in dispute has now been altered to cover only the work for Delta Airlines (see fn. 4, above), we believe that this simply confines the scope of the ultimate award. It does

⁸ We note that no evidence was adduced as to the industry practice and that the evidence was limited to the area practice at New York City airports.

not preclude us from focusing on the past practice concerning comparable work performed for airlines at the same site.⁹

4. Economy and efficiency of operations

The Employer contends that the efficiency of operations of the Delta Airlines mail work supports an award of that work to employees represented by District 15. The Employer asserts that it is administratively difficult to manage the disputed Delta Airlines mail work when employees represented by two unions perform the work. For example, questions of employee seniority, overtime, vacation time, and similar issues are difficult to resolve because reference must be made to the distinct rules set forth in each of two collective-bargaining agreements. Similarly, the Employer argues that efficiency of operations is better achieved by having one set of employees subject to the same supervision.

The record evidence supports the Employer's argument that it is administratively efficient for the Delta Airlines mail work to be assigned solely to employees represented by District 15. Its other contracts to perform mail handling work at LaGuardia Airport—Delta Shuttle and US Air Shuttle (work which is not in dispute in this proceeding)—are assigned to employees represented by District 15. It can achieve the administrative efficiencies of operating under a single labor contract by assigning the disputed work to employees represented by District 15.¹⁰ We thus find that economy and efficiency of operations is better achieved by returning to the Employer's practice of assigning mail handling work exclusively to

⁹ Contrary to the suggestion of the dissent, it is not improper to focus "on the factor of past practice." Past practice is one of the factors traditionally focused on in 10(k) cases. As discussed here, we focus on all such factors.

The dissent does not assign sufficient probative weight to the Employer's past practice of exclusively assigning mail work from 1985 to 1991 to employees represented by District 15. We further note that the Employer's initial assignment of the work in dispute to employees represented by Local 851 was motivated by two factors: (1) employees represented by Local 851 were located at the Employer's hangar 7 cargo operations which was close to the airport post office; and (2) a desire to avoid laying off those employees when the Employer lost cargo handling contracts. The Employer's reasons underlying its initial assignment of the disputed work are no longer operative, however. The Employer has since permanently closed its cargo operation at hangar 7, has lost most of its cargo handling contracts, and wishes to return to its past practice of assigning mail handling work to employees represented by District 15. In light of these circumstances, we cannot agree with our dissenting colleague that the factor of initial assignment of the disputed work favors an award of that work to Local 851-represented employees.

¹⁰ We accordingly cannot agree with the dissent that an award of the disputed work to either group of employees would accomplish the efficiencies sought by the Employer.

The dissent suggests that the Employer should assign the Delta Shuttle work and the U.S. Air Shuttle work to Local 851-represented employees, rather than simply assigning the Delta Airlines work to District 15-represented employees. We do not agree that making two changes is more efficient than making one change.

employees represented by District 15, and that this factor favors such an award.

5. Employer preference

The Employer's current assignment and preference is that the work in dispute be performed by employees represented by District 15. This factor accordingly favors assignment of the disputed work to employees represented by District 15.

6. Relative skills and training

The Employer's vice president, Altizio, testified that employees represented by both Local 851 and District 15 possess the skills to perform sorting and transportation of mail. Altizio further testified, however, that Delta Airlines requires that all employees assigned to its mail operations be certified to handle dangerous goods. The record evidence establishes that *all* cargo employees employed by Hudson and represented by Local 851 possess such certification and, indeed, are required to possess such certification.¹¹ In contrast, there is no requirement that ramp employees represented by District 15 have that certification. Indeed, Altizio testified that some—but not all—ramp employees represented by District 15 "have some dangerous goods training."¹² Because all the employees represented by Local 851 possess the dangerous goods certification required by Delta Airlines to perform mail work, while all the employees represented by District 15 do not, we conclude that the factor of relative skills and training favors an award of the disputed work to employees represented by Local 851.

Conclusions

After considering all the relevant factors, we conclude that Hudson's employees represented by District 15 are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's past general practice of assigning mail handling work to employees represented by District 15, achievement of efficiency and economy in the Employer's operation, and the Employer's preference that the work in dispute be assigned to employees represented by District 15.

The Board has consistently placed great weight on the factor of employer preference in making work assignment awards. *Longshoremen's Local 50 (Brady-Hamilton Stevedore Co.)*, 244 NLRB 275, 276 (1979). When unsupported by other factors, however, employer preference will not be controlling. *Iron Workers Local 380 (Stobek Masonry)*, 267 NLRB 284, 287 fn. 8 (1983).¹³ The Employer's preference in this case is sup-

¹¹ Altizio testified that "all cargo employees who work for Hudson have to be dangerous goods certified." (Emphasis added.)

¹² Neither the Employer nor District 15 presented evidence establishing how many ramp employees actually possess the required certification.

¹³ See *Carpenters Local 1102 (Don Cartage Co.)*, 160 NLRB 1061, 1078 (1966).

ported by the factors of efficiency of operations, and its past general practice of assigning mail handling work to employees represented by District 15.¹⁴ These factors are not outweighed by the factor of skills and training, which we have determined after careful review of the record is the sole factor supporting an award of the disputed work to employees represented by Local 851.

In making this determination, we are awarding the disputed work to employees represented by District No. 15, International Association of Machinists and Aerospace Workers, AFL–CIO, not to that Union or to its members. This determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Hudson General Corporation represented by District No. 15, International Association of Machinists and Aerospace Workers, AFL–CIO, are entitled to perform the sorting and transportation of mail performed by the Employer for Delta Airlines at LaGuardia Airport, New York, New York.

MEMBER LIEBMAN, dissenting.

My colleagues and I fully agree that employer preference in a proceeding under Section 10(k) of the Act will not be controlling when unsupported by other factors. Contrary to the majority, I would find that the Employer's preference, to assign the disputed work to employees represented by District No. 15, International Association of Machinists and Aerospace Workers, AFL–CIO (District 15) is not supported by the factors of past practice or efficiency of operations.

The record establishes that the Employer assigned the disputed Delta Airlines mail work exclusively to employees represented by International Brotherhood of Teamsters, AFL–CIO (Local 851) when it first secured the contract to sort and transport mail for Delta Airlines in August 1994. Indeed, until May 1995, all 12 employees performing the Delta Airlines mail work were represented by Local 851¹. The record thus confirms that the Employer's past assignment of the disputed work was to employees represented by Local 851. This factor accordingly favors an award of the disputed work to those employees. In fact, the instant controversy began when the Employer assigned employees represented by District 15 to perform Delta Airlines mail work in May 1995, which

¹⁴ Compare *Iron Workers Local 229 (M. H. Golden Construction Co.)*, 218 NLRB 1144 (1975) (employer preference not supported by area practice and efficiency).

¹ Employees represented by District 15 were assigned to assist in the performance of the Delta Airlines mail work on an as needed basis.

Local 851 immediately protested through the grievance-arbitration process.²

My colleagues acknowledge that the Employer's past general practice has included assignment of mail work to employees represented by both Unions. But they ignore critical record evidence. While more individual mail handling contracts to service individual airlines have been assigned to employees represented by District 15, nonetheless the Employer's largest contract and the bulk of its current mail work has been assigned to employees represented by Local 851.³ The record evidence accordingly does not support the Employer's contention that its past practice has been to assign mail work uniformly to employees represented by District 15. Indeed, the reverse may be true; the Employer's past practice shows that it assigned the largest volume of its mail work to employees represented by Local 851. I accordingly conclude that the Employer's past practice shows assignment of mail work to employees represented by both unions, and that this factor does not favor an award of the disputed work to employees represented by District 15.⁴

Finally, I cannot agree that efficiency of operations supports an award of the work in dispute to employees represented by District 15. The Employer argues persuasively that it is administratively efficient for the Delta Airlines mail work to be assigned to employees represented by a single union. But, it does not establish that efficiency is achieved by assigning that mail work to employees represented by one union rather than another. There accordingly is no basis for concluding that the factor of efficiency of operations favors an award of the

² I accept my colleagues' observation that my opinion "focuses" on the disputed Delta Airlines mail work that lies at the very heart of this jurisdictional controversy. Unfortunately, the same cannot be said of their opinion. They frankly admit that their "focus" lies elsewhere, i.e., on the factor of past practice, which, as discussed in the paragraph of text that follows, does not support an award of the disputed work to employees represented by District 15.

³ The Employer's vice president, Altizio, testified that "Delta [Airlines] is a very large mail carrier. They're one of the largest at LaGuardia, if not the largest." The record shows that the Employer performs the Delta Airlines mail work with three shifts working continuously 24 hours a day and 7 days a week, servicing approximately 80 flights a day at upwards of 2000 pounds of mail per flight. In contrast, the record establishes that the mail work performed for the Delta Shuttle and US Air Shuttle—work assigned to employees represented by District 15—is of significantly less volume than that of Delta Airlines, and has a minimal sort function. Moreover, the Air Canada work that was reassigned to Local 851-represented employees also involved a large volume of mail.

⁴ I have carefully considered the argument by the Employer and my colleagues that the assignment of mail work to employees represented by Local 851 has in essence been an aberration from its normal practice, based only on its gain or loss of a particular contract and the corresponding opening and then closing of its cargo operations at hangar 7. The record shows, however, that the Employer's operations are characterized by the regular and frequent gain and loss of contracts. The assignment of mail work in response to those occurrences accordingly must be viewed as a normal—rather than an aberrant—aspect of the Employer's operations.

disputed work to either group of employees; rather, an award to either would accomplish the efficiencies sought by the Employer. Indeed, the Employer originally assigned the Delta Airlines mail work solely to employees represented by Local 851. Apparently that did not present administrative difficulties. Those arose only when in May 1995 the Employer began assigning employees represented by District 15 to replace employees represented by Local 851 to perform the Delta Airlines mail work—the genesis of the instant dispute.⁵

⁵ I have fully considered the Employer's additional contention that efficiency of operations requires that all its mail work for *all* airlines be performed by employees represented by a single union so as to provide uniform supervision and a single set of terms and conditions of employment. The majority finds merit in this argument, reasoning that because the Employer's other mail handling work is assigned to employees represented by District 15, the only way the Employer can achieve its "one-union goal" is to assign the Delta Airlines mail work to those employees as well. This argument does not withstand scrutiny, however. The Employer has assigned mail work to employees represented by both Unions for some time. "Administrative inefficiencies" only arose when it began reassigning the Delta Airlines work from Local 851-represented employees to District 15-represented employees. Furthermore, as discussed above, the mail work performed by Local 851-represented employees for Delta Airlines is of significantly greater volume than the mail work performed by District 15-represented employees for the Delta Shuttle and the US Air Shuttle. Therefore, the

I would thus award the Delta Airlines mail work to employees represented by Local 851. This is based on the Employer's assignment of the work in dispute to employees represented by Local 851, and the superior skills and training of the Local 851-represented employees, which my colleagues concede favors an award of the disputed work to employees represented by Local 851. These factors outweigh employer preference, the sole factor favoring an award of the disputed work to employees represented by District 15.

Employer preference cannot be made the touchstone in determining a jurisdictional dispute. To do so would violate the Supreme Court's directive in *Columbia Broadcasting*⁶ that the Board make its award of disputed work after giving due consideration to all the relevant factors. *Iron Workers Local 380 (Stobek Masonry)*, 267 NLRB 284, 287 fn. 8 (1983).⁷

Employer could have achieved its "one-union" goal with even fewer "administrative difficulties" had it reassigned the Delta Shuttle work and the US Air Shuttle work to employees represented by Local 851—the converse of what it did.

⁶ *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961).

⁷ See *Carpenters Local 1102 (Don Cartage Co.)*, 160 NLRB 1061, 1078 (1966).