

**Newspaper Chauffeurs, Distributors and Helpers Local Union No. 259, a/w International Brotherhood of Teamsters, AFL-CIO and Globe Newspaper Company and Boston Mailers Teamsters Local Union No. 1, a/w International Brotherhood of Teamsters, AFL-CIO.** Case 1-CD-994

February 16, 1999

DECISION AND DETERMINATION OF DISPUTE  
BY MEMBERS FOX, LIEBMAN, AND BRAME

The charge in this Section 10(k) proceeding was filed June 1, 1998, by Globe Newspaper Company, the Employer, alleging that Newspaper Chauffeurs, Distributors and Helpers Local Union No. 259, affiliated with International Brotherhood of Teamsters, AFL-CIO (Local 259) 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 Boston Mailers Teamsters Local Union No. 1, affiliated with International Brotherhood of Teamsters, AFL-CIO (Mailers). The hearing was held June 26 and 29, 1998, before Hearing Officer Joseph F. Griffin.

The National Labor Relations 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

The parties stipulated, and we find, that the Employer is a Massachusetts corporation engaged in the operation of a newspaper. Annually, the Employer has gross revenues in excess of \$200,000; held membership in and subscribed to various interstate news services; published various nationally syndicated features; and advertised nationally sold products. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 259 and Mailers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

*A. Background and Facts of the Dispute*

The Employer produces and distributes a daily newspaper, The Boston Globe (Globe). The Employer also prints and distributes the New England edition of the New York Times (Times) newspaper. The Employer also distributes, but does not print or produce, approximately 57 other daily, weekly, or monthly publications. These publications include the Wall Street Journal, Investors Business Daily, Financial Times, and the Christian Science Monitor. They also include a number of smaller publications, many of which are associated with different ethnic groups in the Boston area, referred to as the "foreign products." Collectively, all of these publica-

tions are referred to as "non-Globe products," i.e., products which are distributed by the Employer but which are not The Boston Globe. The work of producing and distributing the Globe takes place at two plants, one at Morrissey Boulevard in Boston and the other in Billerica, Massachusetts. The Times New England edition is printed in Billerica.

The pressroom and the mailroom at the Employer's Morrissey Boulevard plant are located on the second floor. The delivery department, which is responsible for the distribution of the papers, is located on the first floor. Once the papers leave the pressroom and enter the mailroom, they are taken by a machine to the stacker, which automatically stacks, turns, and counts the papers into an untied bundle. Most of the papers leaving the stacker are taken by a conveyor belt to the tie machine, which compresses and mechanically ties the bundles with a plastic band; from there, the bundles of papers are deposited by a conveyor belt to the tray system, which sends the bundles down a spiral chute to the delivery dock on the first floor. The papers which do not go into the tie machine are taken from the stacker by employees represented by Mailers, placed on skids and brought to a table area within the mailroom. These employees then make up a number of specialized bundles, including lead bundles,<sup>1</sup> Post Office bundles, airport freight bundles, and special order bundles. Once these specialized bundles have been hand counted and the appropriate labels placed on them, they are carried by conveyor belt to a mail chute leading to the delivery dock.

The bundles which arrive at the delivery dock are stacked according to the truck upon which each is to be loaded by platform workers who are represented by Local 259. The drivers, who are also represented by Local 259, then pick up the appropriate stacks from the end of the loading dock and place them on their trucks, along with the bundles which have come through the tray system. Each truck may carry papers for multiple destinations, with a different number of papers to be delivered to each destination. During their trips, the drivers are required to take apart bundles of papers, and count and tie odd-sized bundles for delivery points as necessary to provide the correct number of papers at each destination. The drivers may perform this work directly on the truck, or they may do it at the loading platform.

The work in dispute is the work involved in preparing the non-Globe products for distribution, including the offloading of the non-Globe products upon delivery to the Employer's Morrissey Boulevard facility, and the subsequent sorting and reloading of the non-Globe products into the Employer's trucks for distribution. In November 1993, the Employer began distributing the Investors Business Daily. During that same year, the Em-

<sup>1</sup> A "lead bundle" is prepared for each delivery trip, and each has a label stating how many newspapers are to be on each trip.

ployer was purchased by the New York Times Company, and discussions began regarding the possibility of the Employer printing and distributing the Times New England edition. In mid-January 1997, the Employer began distributing the Wall Street Journal and a number of other Dow Jones publications. In February 1997, the Employer began to print the Times New England edition at its Billerica plant, and to distribute that newspaper as well. The Employer also began to distribute other non-Globe products, as discussed above. Prior to that time, the non-Globe products, including the Times New England edition, had been distributed by a company called News Distributors, Inc. When the Employer began to print and distribute the New England edition of the Times, News Distributors went out of business.<sup>2</sup>

The non-Globe products other than the Times New England edition are delivered to the Employer's Morrissey Boulevard facility by truck from non-Globe production points in New Jersey, Connecticut, and Massachusetts. The Times New England edition is brought to the Morrissey Boulevard facility by shuttle trucks from the Billerica plant.

The disputed work is currently performed by employees who are represented by Local 259. These employees work the night shift in the delivery department at the Morrissey Boulevard facility, and they are in one of three classifications: platform workers, setup drivers, and drivers.

Generally, there are five to six platform workers each night, working from 10:30 p.m. to 6 a.m. There are three setup drivers who work from 1 until 8:30 a.m. Between 1 and 3 a.m., the setup drivers perform setup work associated with the distribution of the non-Globe products; thereafter, they drive their respective routes. There are 52 drivers who drive route trucks; they work a variety of shifts, beginning at 2 and ending at 10:30 a. m.<sup>3</sup> There are 29 drivers who drive relay trucks; they also work a number of different shifts, beginning at 11 p.m. and ending at 9 a.m.<sup>4</sup> All drivers, assisted by platform workers,

<sup>2</sup> The News Distributors employees who performed the work of distributing the Times were represented by Local 259, which also represents the Employer's delivery department employees. In 1993, in anticipation of delivering the Times New England edition and other non-Globe products in the future, the Employer and Local 259 negotiated new contract language which would allow the delivery of non-Globe products on the Employer's trucks. The Employer and Local 259 also negotiated a side letter agreement regarding the Local 259 members employed at the time by News Distributors, by which the Employer agreed that if News Distributors went out of business, the Employer would give preferential hiring rights to the Local 259 members then employed by News Distributors. As a result of this side letter agreement, when News Distributors went out of business in 1997, the Employer hired a number of Local 259 members who had formerly been employed at News Distributors.

<sup>3</sup> Route trucks deliver papers primarily to retail outlets within the Boston metropolitan area for single copy sale.

<sup>4</sup> Relay trucks deliver papers primarily to the Employer's home delivery branch locations.

perform the work involved in loading their trucks before leaving the Employer's facility.

The platform workers on the night shift break apart, count, and sort the delivered bundles of the various non-Globe products. The bundles of the Christian Science Monitor are delivered at 5 p.m. and are left outside the door of the loading dock area until the platform workers arrive for their shift. The counted papers destined for the relay trucks are placed directly on the loading platform, where they will be matched up for the appropriate trips later in the evening. Those destined for route trucks are set aside until later in the shift, when other Local 259-represented employees will bring them to sorting tables located in the loading dock area and break them out into piles by route number.

The Investors Business Daily and the Financial Times are scheduled to arrive between 10:30 and 11 p.m. These papers are taken from the delivery trucks by Local 259-represented employees (platform workers or drivers, depending on who is available), and stacked on the outside rear platform according to destination. Some of these publications are already tied in the appropriate-size bundles for relay delivery, with a top page indicating their destination; these particular bundles are not broken down, but are left in stacks on the rear platform, to be placed in relay trucks for delivery later in the evening. The remaining bundles are offloaded from the trucks at the rear loading dock, and taken by Local 259-represented employees to the front loading dock.

At approximately 11 p.m., the evening's run of the Globe begins arriving at the delivery dock from the mailroom above. The drivers and the platform workers represented by Local 259 begin to load the Globe onto the route and relay trucks for delivery. The run of the Globe continues throughout the night as the first, second, and third editions are printed.

At 1 a.m., the three setup drivers begin their shifts. They take the Investors Business Daily and the Financial Times bundles which are destined for route trucks from the front loading dock, break them apart, and place the papers into bins, or in stacks on the sorting tables, according to route numbers. There are approximately 57 wire-and-wood bins located along one wall of the delivery department, with the bin numbers corresponding to route numbers. Non-Globe products for each route are placed in the appropriate bin, to be loaded later onto the route trucks. Similarly, the sorting tables have route numbers designated on them, so the various non-Globe products can be stacked according to route numbers.

Also at approximately 1 a.m., the Times New England edition arrives from the Billerica plant. These papers have already been processed by employees represented by Mailers in the same way that the Globe is processed in the mailroom at the Morrissey Boulevard facility. When the truck carrying the Times papers from Billerica arrives, it delivers the papers to the rear platform, where

they are unloaded by platform workers and drivers and placed directly into waiting relay trucks.

At approximately 2 a.m., the Dow Jones products (including the Wall Street Journal) arrive at the rear loading dock. These papers are taken off the truck and brought by hand truck to the inside front loading dock by an employee represented by Local 259. From the front loading dock, they are taken by drivers and platform workers and placed in the bins according to route numbers. Also, there are approximately five route trucks onto which large bundles of the Wall Street Journal are loaded directly for delivery to retail outlets.

The publications known as “foreign products” arrive by truck at approximately 2:30 a.m. This truck pulls directly into the inside loading dock area, near the sorting table. Local 259-represented employees take the publications off the truck, open the bundles, and sort the publications according to route number on the sorting tables. Some of the bundles contain multiple publications. Those bundles are separated by publication on a separate table and then counted out in correct numbers and placed by route number on the sorting tables, later to be picked up and loaded onto the trucks by the drivers.

Thus, overall the work of receiving and processing the various non-Globe products takes approximately 2 to 2-1/2 noncontinuous hours of a full 7-1/2 hour shift. The work is time sensitive and must be done quickly, so the route trucks can leave the facility as quickly as possible to ensure timely delivery of the Globe. If these non-Globe products are not processed by the time the route trucks leave, they are not delivered.

By letter dated February 20, 1997, Mailers informed the Employer that it believed the Employer had violated the jurisdiction provisions of the collective-bargaining agreement between them by assigning the work of processing and sorting the non-Globe products to employees who were not represented by Mailers. Specifically, Mailers contended that the sorting tables and bins used in the delivery department constituted a “mailroom” as that term is used in the jurisdiction section of the parties’ collective-bargaining agreement, and that Mailers-represented employees should thus be performing the disputed work. Mailers announced its intention to pursue a grievance regarding this issue, and later requested arbitration. Accordingly, a joint board hearing was scheduled for May 28, 1998.

The Employer notified Local 259 of the scheduled joint board hearing. By letter dated May 26, 1998, Local 259 threatened to “strike, boycott and picket the Boston Globe to preserve our traditional work jurisdiction and compel the performance of non-Globe distribution work by its members.” This letter also stated that Local 259 would consider the Employer’s participation in the May 28 joint board proceeding to be an action that would be inconsistent with preserving the current assignment of the work, prompting Local 259 to make good on its

threats. Thereafter, the Employer requested Local 259 to forebear from following through on its threats in order to allow the Employer to attend the joint board hearing, and in return the Employer assured Local 259 that it would take no action at the joint board hearing inconsistent with the present work assignment.

At the joint board hearing, Mailers reiterated its claim that its members were entitled to perform the disputed work because the sorting table and bins constituted a “mailroom,” and the work performed with those bins and sorting tables was mailroom work. Faced with Mailers’ insistence on arbitrating its grievance, and Local 259’s threat to take prohibited action against the Employer should the Employer take any action inconsistent with the present assignment of the work, the Employer filed an 8(b)(4)(D) charge against Local 259 with the Board.

#### *B. Work in Dispute*

The disputed work consists of the offloading of the non-Globe products upon delivery to the Employer’s facility at Morrissey Boulevard, Boston, Massachusetts, from various production points in New Jersey, Connecticut, and Massachusetts, and the subsequent sorting and reloading of the non-Globe products into the Employer’s trucks for distribution by the Employer.

#### *C. Contentions of the Parties*

The Employer and Local 259 each assert that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the dispute is properly before the Board for determination. The Employer and Local 259 also each contend that the disputed work should be awarded to employees represented by Local 259 based on the collective-bargaining agreements, the Employer’s preference and past practice, and economy and efficiency of operations.

Mailers contends that it has made no competing claim for the work in dispute, and at the hearing moved to quash the notice of hearing. It asserts that the evidence establishes that it has disclaimed the work in question and that its only dispute with the Employer involves a question of contract interpretation regarding the meaning of the term “mailroom,” for which it has filed a grievance and sought arbitration. Mailers further asserts that the filing of an arguably meritorious grievance does not constitute “coercion” within the meaning of Section 8(b)(4)(D). Mailers then argues that even assuming arguendo that a claim for the work exists, the Board should not award the work in dispute to the employees represented by Local 259, based on the collective-bargaining agreements, the Employer’s past practice, and economy and efficiency of operations. Mailers further argues that the Employer’s expressed preference in awarding the disputed work to employees represented by Local 259 is based on fear of unlawful economic action and that the Board should not consider such a factor in making a determination of dispute.

#### D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that: (1) there are competing claims for the work; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (3) that the parties have not agreed on a method for the voluntary adjustment of the dispute.

Initially, we find that there are competing claims for the disputed work. In finding no merit to Mailers' assertion that it has not claimed the disputed work, we rely on the gravamen of Mailers' grievance. The grievance seeks an arbitrator's interpretation of the term "mailroom," in light of Mailers' assertion that the sorting tables and bins in the delivery department used in the distribution of the non-Globe products constitute a mailroom, and that the Employer violated the jurisdiction provisions of its collective-bargaining agreement with Mailers by assigning the work in dispute to Local 259-represented employees, because that work is performed in a "mailroom." We also rely on the fact that at the joint board hearing on May 28, 1998, Mailers made a claim for the disputed work. Finally, we rely on the fact that Mailers continues to pursue its grievance and arbitration demand, which we find is inconsistent with any assertion of a disclaimed interest in the work. *Plumbers District Council 16 (L & M Plumbing)*, 301 NLRB 1203, 1204 (1991). Thus, we find that Mailers has claimed the work in dispute. It is undisputed that Local 259 has also claimed the disputed work, as established by its letter dated May 26, 1998, in which it threatened to "strike, boycott and picket the [Employer]" to ensure that the Employer continued to assign the work in dispute to the employees represented by Local 259.

There is also reasonable cause to believe that Section 8(b)(4)(D) has been violated. There is no dispute that, as noted above, by letter dated May 26, 1998, Local 259 threatened economic action against the Employer in the event of a reassignment of the disputed work to employees represented by Mailers. We find that this threat is sufficient to establish reasonable cause to believe that Section 8(b)(4)(D) has been violated. Further, we reject Mailers' motion to quash the notice of hearing based on its argument that the filing of an arguably meritorious grievance does not constitute coercion within the meaning of Section 8(b)(4)(D). The Employer has filed a charge against Local 259, not Mailers, and thus whether Mailers' grievance is coercive within the meaning of Section 8(b)(4)(D) is not at issue.

The parties stipulated at hearing that there is no agreed-upon method for the voluntary adjustment of the dispute. Thus, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find

that the dispute is properly before the Board for determination.

#### 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 (1962).

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

##### 1. Certifications and collective-bargaining agreements

The parties have stipulated that there are no Board certifications applicable to the work in dispute. Each Union asserts, however, that its collective-bargaining agreement with the Employer entitles employees it represents to the disputed work.

Both Local 259's and Mailers' collective-bargaining agreements with the Employer preserve for each union jurisdiction over the work that has historically been performed by employees it represents at the Employer's facility. Mailers-represented employees have not historically had jurisdiction over work similar to that now in dispute, while Local 259-represented employees have historically performed such work.

Article I(a) of the most recent collective-bargaining agreement between the Employer and Local 259 provides that:

[t]he jurisdiction of the Union shall remain unchanged and . . . the work now being done by employees covered by this Agreement in any part of the buildings of the Employer, such as garages, mailing rooms, delivery platforms, etc. . . . shall continue to be done by employees working under the provisions of this Agreement.

Article I also specifically provides for "platform staffing" to be done by Local 259-represented employees, in addition to the work of driving delivery trucks (art. I(h), (k) (i) and (ii)). Historically, as described above, employees represented by Local 259 have not been involved in the production process, but rather have worked with the distribution of the newspapers after those papers arrive in the delivery department. As contemplated by the collective-bargaining agreement, this work has included work done on the loading platform, where Local 259-represented employees now perform the work required to process the non-Globe products. Moreover, historically employees represented by Local 259 have been responsible for separating bundles of newspapers, and recounting and rebundling them to ensure proper delivery. This is precisely the same kind of work that Local 259-

represented employees are now performing on the loading platform with respect to the non-Globe products.

The jurisdiction section (sec. 9) of Mailers' most recent collective-bargaining agreement with the Employer states: "It is mutually agreed that the jurisdiction of the Union heretofore recognized shall be preserved." The clause then describes the work generally performed by employees represented by Mailers "within the regular mailrooms or in any mailing room leased, owned or operated by the employer." As described above, the work of the employees represented by Mailers historically has been a part of the production process, involving the processing of newspapers in the second-floor mailroom at the Morrissey Boulevard facility as they leave the presses, before they are sent to the first-floor delivery department. Mailers-represented employees have not historically been involved in the distribution process, which begins as the papers arrive in the delivery department.

Thus, we find that the factor of collective-bargaining agreements favors an award of the work to employees represented by Local 259.

## 2. Employer preference and past practice

The Employer has assigned the work in dispute to employees represented by Local 259. The Employer prefers that the work in dispute continue to be performed by Local 259-represented employees, based on past practice, economic and efficiency advantages, and the Employer's collective-bargaining agreement with Local 259. Accordingly, the factor of Employer preference favors awarding the disputed work to employees represented by Local 259.

Regarding the Employer's past practice, employees represented by Local 259 have been performing the disputed work since November 1993 with respect to the Investors Business Daily. Further, the drivers represented by Local 259 have historically been responsible for breaking apart bundles of newspapers and recounting and tying new bundles so the correct number of papers is supplied to each stop. This practice has been occurring for at least the last 20 years at the Globe, and constitutes the same work as the disputed work the drivers are now doing to prepare the non-Globe products for delivery. Also, Local 259-represented employees have traditionally performed platform work in addition to driving the route and relay trucks. This platform work is part of the distribution process, and, again, constitutes the same work as the work now in dispute for non-Globe products. The employees represented by Mailers, on the other hand, have never worked on the loading platforms. Their work is performed in the second-floor mailroom at the Morrissey Boulevard plant, and is part of the production process rather than the distribution process.<sup>5</sup> Thus, the

<sup>5</sup> In fact, when the Times New England edition arrives at the Morrissey Boulevard plant for distribution, it has already been through the

factor of Employer past practice favors an award of the disputed work to employees represented by Local 259.

## 3. Area and industry practice

There is no evidence of either area or industry practice on this record. Accordingly, we find that this factor favors neither group of employees.

## 4. Relative skills

Because no specialized skills are needed to perform the disputed work, this factor does not favor an award to either group of employees.

## 5. Economy and efficiency of operations

The work in dispute takes approximately 2 to 2-1/2 hours over the course of a 7-1/2-hour shift. It is highly integrated with other delivery department work and is very time sensitive. The Employer argues that it can be performed most efficiently and economically by Local 259-represented employees who are already present in the delivery area and who perform a number of other platform and driving tasks within Local 259's undisputed jurisdiction; thus, the Local 259-represented employees can process the non-Globe products as they arrive, and then spend the rest of their time doing other platform work or driving the route and relay trucks. Assignment of the disputed work to Mailers-represented employees, however, would produce a scenario in which a Local 259-represented employee offloads the non-Globe product, a Mailers-represented employee breaks and sorts the bundled non-Globe product (while Local 259-represented employees are in the same area breaking and sorting Globe product at the same time), and then a Local 259-represented employee puts the sorted product into a route bin for loading onto a truck by another Local 259-represented employee. In this scenario, a Mailers-represented employee would be idle at some points and the Local 259-represented employee would be idle at other points.

Also, assigning the work to employees represented by Local 259 rather than to employees represented by Mailers allows the number of employees doing the disputed work to vary according to the Employer's needs. For example, on nights when the non-Globe products are late in arriving, all the Local 259-represented employees can be in the delivery area performing their other tasks before the non-Globe products arrive, and then can immediately mobilize to ensure the products are sorted, counted, and placed on the trucks in time for delivery. If employees represented by Mailers performed the disputed work, however, they would either have to be called down from the second-floor mailroom when the non-Globe products arrived, or they would have to stand idle in the delivery department waiting for the product.

mailroom at the Billerica plant, where employees represented by Mailers have already performed their functions for that paper.

Further, the employees represented by Mailers are needed to work on the production of the Globe in the mailroom each night during the run of the various editions, which continues until approximately 4 a.m. During this same time, the non-Globe products are arriving in the delivery department. Thus, if Mailers-represented employees were to perform the disputed work, the Employer would have to pull current employees away from tasks they are already performing in the mailroom, or hire new employees to work less than a full shift in the delivery department. Also, because no Mailers-represented employees currently work in the delivery department, the Employer currently has no mailroom foremen working in that department. If Mailers-represented employees began to work in the delivery department, the Employer would have to place a mailroom foreman in that department to supervise them, because by contract mailroom employees can only be supervised by foremen from that department.

Thus, we find that the factor of economy and efficiency of operations favors an award of the work to employees represented by Local 259.<sup>6</sup>

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<sup>6</sup> Local 259 also contends that the factor of “job impact” favors awarding the work in dispute to employees it represents, arguing that an award of the work in dispute to employees represented by Mailers would result in the layoffs of some Local 259-represented employees.

### Conclusion

After considering all the relevant factors, we conclude that the employees represented by Local 259 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, the Employer’s preference and past practice, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Local 259, not to that Union or its members. The 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 represented by Newspaper Chauffeurs, Distributors and Helpers Local Union No. 259, affiliated with International Brotherhood of Teamsters, AFL–CIO are entitled to perform the work involving the offloading of the non-Globe products upon delivery to the Employer’s facility at Morrissey Boulevard, Boston, Massachusetts, from various production points in New Jersey, Connecticut, and Massachusetts, and the subsequent sorting and reloading of the non-Globe products onto the Employer’s trucks for distribution by the Employer.

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However, there is no evidence in the record supporting Local 259’s argument in this regard.