

Boudreaux's Drywall, Inc. and Carpenters Local Union No. 1846, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Petitioner. Case 15-RC-7698

September 10, 1992

ORDER DENYING REVIEW

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

The Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Acting Regional Director's Decision and Direction of Election (the relevant portion of which is attached), as well as the Petitioner's opposition brief. The request for review is denied as it raises no substantial issues warranting review.¹

¹ Review was requested of the Acting Regional Director's findings that: (1) the Employer's carpenters, carpenter helpers, carpenter foremen, and jobsite laborers, excluding plasterers and warehouse laborers, constitute an appropriate unit for bargaining; and (2) that college students employed as onsite laborers during school vacations are temporary employees lacking a community of interest with other employees. Only the portion of the Acting Regional Director's decision addressing the first issue is attached.

APPENDIX

5. The Petitioner seeks to represent a unit limited to all carpenters, carpenter apprentices, carpenter helpers, and carpenter foremen performing or overseeing work at any and all the Employer's greater New Orleans, Louisiana jobsites. Contrary to Petitioner, the Employer contends that an appropriate unit would necessarily include its jobsite laborers, warehouse laborers, and plasterers. There are approximately thirty-seven employees in the unit Petitioner seeks to represent and approximately fifty-one employees in the unit that the Employer asserts is appropriate. Petitioner requested recognition in writing of the Employer by letter dated June 16, 1992. By letter dated June 19, the employer declined recognition. Until sometime in the 1980's, when the Employer withdrew recognition, and for five or six years prior thereto, it was a party to a multi-employer collective bargaining agreement with a carpenter union covering a carpenter apprentice unit, during which time, carpenter apprentices did the work now done by laborers.³

The Employer, a Louisiana corporation with its principal office and place of business located at New Orleans, Louisiana, is engaged in the business of installing walls and ceilings and in performing plastering work at various locations throughout the United States, including locations in the great-

³ Also around 1978 or 1979, a carpenter union filed a petition for an election among carpenters, carpenter apprentices, and carpenter foremen, and excluded laborers, of the Employer and K & K Drywall and Interiors (K & K) that was later amended to only K & K with employees of the Employer who worked 100 hours or more during the preceding six months for K & K being allowed to vote. A majority of votes were cast for that carpenter union, but no collective-bargaining agreement was ever consummated.

er New Orleans area. As part of the services it renders, the Employer installs metal studs and boards, acoustic ceilings and performs stucco work on building exteriors.

The Employer's president and project manager, the only witness testifying in this hearing, is Thomas Joseph Boudreaux. He has held that position for approximately eight years. Boudreaux's office is located at the Employer's main office located at 4335 Werner Drive in New Orleans, which also houses the offices of two estimators who also serve as project managers, an office manager who handles the books, and a secretary. In the New Orleans area, the Employer presently has several jobs in progress. At a Hibernia Bank, it is performing renovations on the building interior; at Dillard Fine Arts University, it is performing stud work on the building's exterior and drywall and acoustical work on the building's interior; at the Slidell Memorial Hospital, it is performing shell work and interior build-out; at "LP&L," it is performing drywall and acoustical work; at the United States Department of Agriculture, it is performing renovation work; and at the Elmwood Fitness Center, it is performing some unspecified work. In addition, the Employer will commence performing some unspecified work at Tulane University Medical Center in the future.

Normally any project over \$300,000 or \$400,000 will be under the direction of a full-time job superintendent. Employees working on smaller jobs work with a carpenter foreman.⁴

The Employer presently employs between 25 and 30 carpenters. The Employer's carpenters read blueprints, layout the job, frame interior walls, install sheet rock, frame acoustical ceilings and install ceiling tiles. Carpenters work with power saws and equipment, hammers, saws, plumb-bobs, tapes, metal masters, etc. They work under the direction of the superintendent. Carpenters are hired "from the street" with carpentry experience. The Employer does not require its carpenters to have special training and does not provide such training. Presently, the Employer also employs 10 to 12 carpenter helpers.⁵ They are not sent to school or given any formalized instruction to become carpenters. Some are skilled in reading blueprints. Carpenter helpers assist the carpenters in laying out the job, cutting metal studs, and performing other traditional carpentry functions. They work with the same tools as the carpenters. Most of the time, the Employer utilizes a carpenter helper to assist each carpenter. They may also be assigned to unload trucks, install insulation, or do caulking with the laborers when there aren't enough laborers to perform these functions. Carpenter helpers report to the superintendent.

Carpenter foremen are paid between \$13 and \$14 an hour. The starting pay for carpenters is between \$9 and \$12.50 per hour, with most carpenters receiving \$11 an hour. Helpers' starting pay is between \$6 and \$7 an hour. They can be paid as high as \$10 an hour before being considered a carpenter. Carpenter helpers, like carpenters, receive health coverage after six months employment. This is the only employee benefit available to them.

⁴ For discussion of the supervisory authority of carpenter foremen see footnote 9, *infra*.

⁵ The parties agreed at the hearing that the carpenter helpers should be included in an appropriate unit.

Presently, the employer employs approximately five *jobsite* laborers. Two of these laborers are assigned to the Slidell Hospital jobsite, two laborers are assigned to Hibernia Bank jobsite, and one laborer is assigned to Elmwood Fitness Center jobsite. Although the record is unclear, an unspecified number of laborers either worked or are working at the Dillard jobsite. All jobsite laborers report to the superintendent at their respective jobsites. The primary responsibilities of the laborers are transporting the materials to the areas by truck where the carpenters and plasterers are working, unloading the trucks and sweeping of the work area. Laborers have also been directed to install insulation and perform caulking work. On occasion, they have installed scaffolding and performed demolition work with the carpenters. On the Dillard job, for example, laborers stock the carpenters' areas with materials, cleanup after the carpenters, assist carpenters with materials from the ground when work is done in a high area, do interior wall installation, and other remedial jobs.

On occasions when four or five truckloads come in, carpenters and carpenter helpers assist laborers with the unloading of materials and supplies at the jobsite. Usually, this occurs at the commencement of a job. Carpenter helpers may also be assigned to install insulation, or do caulking with the laborers when there aren't enough laborers to perform this function. Carpenters don't normally perform insulation or caulking. If for some reason a carpenter helper does report for work on a particular day, a laborer may fill in and work with a carpenter using some of the same tools. A laborer might even fill in for a carpenter. Laborers do not receive additional pay for such work. Laborers may use carpenter tools such as a screw gun, hammer, caulking gun, measuring tape, and metal-masters. However, the Employer does not place laborers in a situation where they are required to use power saws or equipment where they could get hurt.

According to the employer, the laborer position is considered an entry level job. All employees are reviewed every six months by the superintendent and that review may result in an incremental pay raise and/or a promotion to carpenter helper or carpenter. Employees are orally notified of this promotion policy and there is no formal written promotion plan. At least two of the Employer's former jobsite laborers, J. T. Liviccardi and Gary Cannella, have progressed from laborer to carpenter, and to working foremen. Prior to working for the Employer, they did not have any experience as carpenters. The U.S. Department of Agriculture job is a prevailing wage rate job. On that job the Employer reports carpenters and carpenter helpers as carpenters and laborers as laborers.

Starting pay for laborers is between \$5 and \$5.50 per hour. Some laborers are being paid \$7 to \$8 per hour. Laborers, like carpenters and carpenter helpers, are entitled to health coverage after six months' employment.

The Employer generally employs three or four warehouse laborers who work primarily at its main office and yard. The warehouse stores metal studs, sheet rock, equipment, chop saws, table saws, etc. The warehouse laborers spend a majority of their time hauling material to and from jobsites. They do not perform the tasks of a jobsite laborer on a regular basis. At jobsites, however, superintendents occasionally may direct them to do some cleanup work or take some materials back to the warehouse. These warehouse laborers report to

warehouse foreman Tim Liviccardi.⁶ The yard laborers' hours may fluctuate between 6 and 8 hours a day, while laborers on the jobsite normally work 8 hours a day. Warehouse and jobsite laborers are paid about the same hourly rate, although the warehouse laborer/truck driver makes \$8 or \$8.50 an hour. Both the jobsite and warehouse laborers enjoy the same benefit.

At the present time, the employer only has one plasterer, Luke Crapps. However, the Employer contends that four or five other plasterers are currently on layoff status that should be permitted to vote. Those laid off plasterers generally work 35 to 40 weeks out of the year and are likely to be recalled. Between the beginning of January 1992 and July 10, 1992, Crapps has worked perhaps 24 to 25 pay periods. The plasterers "handle the synthetic plaster lines which are the wall systems and handle the stucco." The primary function of a plasterer is to put mud compound or install styrofoam sheathing. Plasterers are hired to do plastering work and have not been trained in all aspects of carpentry. Plasterers work under the supervision of the jobsite superintendent. They are paid between \$10 and \$12 an hour and have health coverage after six months of employment.

Even if there is no plastering work, the Employer may assign good plasterers to do other things rather than lay off a good plasterer. The plasterer may install sheetrock or do steel stud framing. When it rains, the plasterer goes inside and works for the carpenters. Carpenters may also work with the plasterer installing styrofoam and light materials. Carpenters, however, are not normally directed to assist the plasterer with plastering.

Petitioner seeks to exclude all laborers. In regard to the Petitioner's position that the jobsite laborers should not be included in the unit, the record fails to show that the carpenters participated in or completed a traditional apprenticeship program or achieved journeyman status in a craft. Instead, the record shows that carpenters were hired "off the street" with only some carpentry experience. They are not sent to school or given any specialized training. Significantly, laborers can and have been promoted from a laborer position to a carpenter and even to the position of carpenter foreman. While the Employer has no formal apprenticeship program, it does provide on-the-job training. Moreover, jobsite laborers often assist carpenters in much the same way as carpenter helpers, using carpenter tools in carpentry functions. These laborers even fill in for carpenter helpers and carpenters. Carpenters, carpenter helpers, and jobsite laborers all report to the job superintendent. Every six months, the work performance of these employees is reviewed by the job superintendent and may result in an incremental pay raise or,

⁶The evidence showed that the warehouse foreman, Tim Liviccardi, is salaried and, when he is not assigning and directing the warehouse laborers, he is working with the office personnel. He has the authority to call "Manpower" for additional people. He has also effectively recommended the hire and fire of warehouse laborers. The parties stipulated at the hearing that Liviccardi should be excluded from the unit found appropriate for lack of community of interest. Based on the stipulation of the parties and the record as a whole, I conclude that the warehouse foreman is a supervisor as defined in Sec. 2(11) of the Act and I shall exclude him from the unit found appropriate herein both on the basis of his supervisory status and his lack of community of interest with employees in the unit found appropriate herein.

in the case of laborers and carpenter helpers, promotions to carpenter helper or carpenter positions. Although laborers are paid less than carpenters or carpenter helpers, they all receive the same health benefit.

In view of the foregoing, and the record as a whole, noting particularly the absence of a formal apprentice program or requirement, job progression, common carpenter function, and common supervision, I am satisfied that the carpenter foremen, carpenters, carpenterhelpers, and jobsite laborers are a readily identifiable and homogeneous group with a community of interest separate and apart from other employees. See *ECM, Inc.*, 264 NLRB 1077 (1982), *Brown & Root, Inc.*, 258 NLRB 1002 (1981), and *New Enterprise Stone & Lime*, 172 NLRB 2157 (1968).⁷

In regard to the warehouse laborers, I reach a different conclusion. Based on the above and the record as a whole, and noting particularly that those laborers report to a warehouse foreman, spend a majority of their time hauling materials to and from jobsites, do not perform the tasks of a jobsite laborer on a regular basis, are not in the carpentry line

⁷The Petitioner particularly cites *Dick Kelchner Excavating Company*, 236 NLRB 1414 (1978), in support of its position that the jobsite laborers should not be included in the unit with carpenters and carpenter helpers. In that case, operators were not placed in a unit with laborers. However, contrary to the case at hand, it does not appear that the laborers in the *Kelchner* case assisted the operators or that laborers could progress to become operators. Further, those operators were sent to training seminars and in some instances received special schooling to learn or improve upon their skills.

of progression, and have different hours than jobsite laborers, I find that the warehouse laborers do not have a community of interest or common function with the other employees in the unit found appropriate herein and should be excluded from said unit.

In regard to the plasterers, they are employed because of their ability to do plastering work. Consequently, their work requires that they possess a degree of skill in that area. Although noting that they are paid at a wage rate comparable to carpenters and may at times work with carpenters, such assignments are secondary in nature and are made basically to give them something to do when there is no plastering work for them to perform. The primary function of the plasterers at all times remains plastering work. Contrary to the Employer's contention, the plasterers' functions are not highly integrated with those of the carpenters, carpenter helpers, and jobsite laborers. Neither are they in that line of progression. The plasterers' duties are separate and distinct from the carpentry functions. See *New Enterprise Stone & Lime*, supra. I will therefore exclude the possibly 5 or 6 plasterers from the unit found appropriate herein. The Employer's reliance on *S. J. Groves & Sons Co.*, 267 NLRB 175 (1983), and *Sunray Ltd.*, 258 NLRB 517 (1981), is misplaced since, in both of these cases, the units of combined classifications were found appropriate solely because the evidence did not establish distinct functions of the unit requested. It is apparent that, in the instant case, these distinctions are present between the plasterers and other jobsite classifications discussed herein.