

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

YANKEE ENERGY SERVICES COMPANY,
d/b/a YESCo

Employer¹

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 90

Petitioner

Case No. 34-RC-1726

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

¹ The Employer's name appears as amended at the hearing.

5. The Employer is a mechanical services contractor which installs heating, ventilation and air conditioning (HVAC) systems for new construction and renovation and remodeling of existing buildings. Its principal office and place of business is located in Milldale, Connecticut. The Petitioner seeks to represent a unit limited to the 12 journeyperson and apprentice electricians employed by the Employer in its electrical department. The sole issue involves the Employer's contention that the petitioned-for unit is inappropriate, and that the only appropriate unit would be composed of all 110 employees in its electrical, plumbing, sheet metal and services departments. There is no prior history of collective bargaining involving the petitioned-for employees.

Overall supervision is provided by General Manager Paul Bohonowicz. Reporting directly to Bohonowicz are Construction Manager Jim Corbett, who oversees all construction and installation work, and Service Manager Bill Carbone, who oversees the servicing of HVAC systems. Reporting directly to Corbett are the trades managers for the electrical, plumbing, sheet metal, and services departments. A project manager is assigned to oversee each construction site who is responsible for coordinating the work of all employees assigned to that site. The trades manager for the electrical department is Roy Beaudoin. Beaudoin's responsibilities, which are limited to employees in the electrical department, include assigning electricians to their jobsites, reviewing progress and field reports on the electricians' work, reviewing time cards, disciplining electricians, and drafting electrician evaluations which are used for merit raise determinations. Beaudoin also schedules and conducts electrical department meetings. However, Beaudoin provides no direct supervision over electrical department employees at construction job sites, unless he is serving as a project manager.

With regard to the nature of the Employer's operations, the record reveals that the Employer was formed in 1996 by acquiring the assets of several smaller contracting firms.² This resulted in one "full-service" company offering mechanical contracting services in a manner which the Employer claims is distinctly different from the traditional method of doing business in the construction industry. In this regard, approximately 20-30% of the Employer's work is performing strictly electrical services, and the remainder

is performing a “package” of mechanical contracting services involving the installation of HVAC systems. With regard to the latter work, the record reflects that electrical department employees pull and attach the wire which supplies the electrical power to the HVAC unit. The plumbing department employees install the pipes throughout the building which carry water and other liquids to and from the HVAC unit. The sheet metal department employees fabricate and install ductwork. The service department employees program the controls on the new HVAC system, start up the new system, and service existing systems.

Although it appears from the record that employees in each trades department are primarily responsible for performing the aspect of HVAC installation relevant to their trade, the Employer asserts that it utilizes a “team approach” whereby employees from each trades department “work together” on a jobsite under the direct supervision of a project manager. However, the record reflects virtually no evidence regarding the nature of that supervision, the number or types of employees from each department typically assigned to each project, the nature of the work related contacts between employees from each department working on the site, or the manner in which employees “work together” on the jobsite. Moreover, an apprentice electrician testified that his experience involving an HVAC installation at a construction site was for the plumbing and sheet metal work to be performed first, followed by the electrical work of running the power to the unit, and then the controls work performed by employees from the service department.

All employees in the electrical department possess, or are working toward receiving, an E-1 or E-2 license from the State of Connecticut. E-1 is an electrical contractor’s license which allows the holder to obtain permits. E-2 is held by those whom the State considers to be journeyman electricians. In order to obtain an E-2 license, an individual must complete a state approved apprenticeship program and then pass the Connecticut licensing exam. The apprenticeship program consists of classroom and on-the-job training. The 500-600 hours of classroom training includes 15 classes, 4 in the general field of mathematics and 11 specifically related to electricity.

² Included in that acquisition were two electrical contracting companies, one owned by Bohonowicz and the other by Beaudoin. The electricians employed by those two companies appear to constitute most

Classroom time is followed by 4 years of on-the-job training under the direction and guidance of a licensed journeyman.

The State of Connecticut requires that installation of high voltage wiring be performed by the holder of an "E" license. Thus, only employees from the Employer's electrical department may install the wiring which provides power to the HVAC unit. Several employees from the service department hold "low-level" electrical licenses other than E licenses, permitting them to perform some electrical work. In addition, employees from any department may install pneumatic tubing for thermostats, which does not require any specialized electrical training.

Electrical department employees have occasionally been assigned to jobs outside of the electrical department. In this regard, the record reflects that 5 employees have been temporarily transferred to the service department. Four of these employees worked in the service department for two week intervals during the Christmas holidays in order to avoid the lay-off of any electrical department employees for lack of work. The fifth employee, John Discenza, also holds an "S" license from the State of Connecticut permitting him to perform heating, hot air, and hydronics work. Since September of 1998, Discenza has spent 10-12 weeks performing such work in the service department because of its heavy workload. The record further reflects that only one employee was transferred into the electrical department, but she quickly transferred back to the service department because the electrical wasn't to her "liking" or "abilities".

All employees receive the same benefits and are subject to the same personnel rules and policies. The pay ranges for licensed employees in the trades departments are substantially the same, with a five to ten percent differential among them. Wages of all employees are determined on a merit-based system. All trades employees are supplied with company uniforms and trade specific hand tools as needed. Approximately fifty trades employees have been provided with company cars stocked with needed tools and materials. The Employer provides safety training to all employees, and sponsors an apprenticeship program which assists employees in fulfilling trade specific apprenticeship requirements.

of the electricians currently employed by the Employer.

Based upon the foregoing and the record as a whole, I find that the journeyperson and apprentice electricians employed by the Employer in its electrical department constitute an appropriate unit. See, e.g., *Burns and Roe Services Corp.*, 313 NLRB 1307 (1994); *Schaus Roofing*, 323 NLRB 781 (1997); *CCI Construction Co.*, 326 NLRB No. 134 (1998). More particularly, I note that the petitioned-for unit is comprised entirely of journeyperson and apprentice electricians, a distinct trade as recognized by state licensing requirements, employed in a separate department subject to separate immediate supervision. Moreover, job assignments are made primarily along craft lines, permanent transfers into and out of the electrical department are almost non-existent, and temporary transfers are confined primarily to occasional holiday periods. Finally, the Employer's utilization of a "team approach" requiring electrical department employees to coordinate their work with employees from other departments is, standing alone, insufficient to preclude the formation of a separate craft unit of electrical department employees, especially in the absence of evidence showing that the "team approach" has blurred or obliterated the functions, skills and working conditions between the electrical department employees and employees from other departments. See, e.g., *Atlantic Richfield Co.*, 231 NLRB 31, 32 (1977); *E.I. DuPont de Nemours & Co.*, 162 NLRB 413, 418 (1966); *NLRB v. Metal Container Corp.*, 660 F.2d 1309, 108 LRRM 2625, 2629 (8th Cir. 1981); *Burns & Roe*, 313 NLRB at 1309.³

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeyperson and apprentice electricians employed by the Employer at its Milldale, Connecticut facility; but excluding all other

³ *Brown & Root, Inc.*, 258 NLRB 1002 (1981) and *Longcrier Co.*, 277 NLRB 570 (1985), cited by the Employer in its post-hearing brief, are clearly distinguishable from the instant case. In each case, the Board found that the petitioned-for employees did not satisfy the requirements of either a craft unit or a functionally distinct group with common interests separate from other skilled employees. Thus, in *Brown & Root*, the Board noted that the petitioned-for employees did not participate in or complete a traditional apprenticeship program or achieve journeyman status in a craft; they were assigned according to the needs and not according to the craft; they were not separately supervised; and there was substantial record evidence of the integrated nature of the work performed at construction sites. In *Longcrier*, the Board similarly noted that the petitioned-for employees did not participate in a traditional apprenticeship program or achieve journeyman status; they were not separately supervised; the employer was not organized along craft or department lines; there was substantial interchange of employees among all tasks performed at the construction site; and there was substantial on-site supervision of all work.

employees, office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Electrical Workers, Local 90.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st

Floor, Hartford, Connecticut 06103, on or before June 14, 1999. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 21, 1999.

Dated at Hartford, Connecticut this 7th day of June, 1999.

/s/ Jonathan B. Kreisberg
Jonathan B. Kreisberg, Acting Regional Director
Region 34
National Labor Relations Board

440-1760-9167-2433