

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

EDWARDS ELECTRICAL & MECHANICAL, INC.

Employer

and

Case 25-RC-10023-1

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 20, a/w
SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO and INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL UNION NO. 481, a/w INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO
and INDIANA STATE PIPETRADES ASSOCIATION and
its affiliate LOCAL UNION NO. 440 OF THE
UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND PIPEFITTING
INDUSTRY OF THE UNITED STATES AND CANADA,
a/w UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND PIPEFITTING
INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,

Joint Petitioners

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 on March 12 and 14, 2001, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of 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 made at the hearing are free from error and are hereby affirmed.¹
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 organizations involved herein claim 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.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time construction field employees, field technicians, service technicians, mechanics, drivers, shop employees, helpers and apprentices employed by the Employer at its Indianapolis, Indiana facility; BUT excluding all managerial employees, confidential employees, draftsmen, professional employees, engineers, salespersons, office clerical employees, guards, central security system personnel, estimators and supervisors as defined in the Act, and all persons employed at the Employer's Columbus, Ohio and Erlanger, Kentucky facilities.

I. STATEMENT OF FACTS

The Employer, Edwards Electrical & Mechanical, Inc., is an electrical and mechanical contractor in the construction industry which is engaged in new construction as well as the maintenance, service and repair of existing mechanical and electrical systems and equipment. Edwards performs work on jobsites located predominantly in the Midwestern states, and operates three facilities. Its Indianapolis, Indiana facility is its largest and also houses the Company's corporate headquarters. The Indianapolis facility employs approximately 350 employees within the petitioned bargaining unit. The Employer's Erlanger, Kentucky facility, located near Cincinnati, Ohio, employs approximately 91 employees within the unit described in the petition herein, while its Columbus, Ohio facility employs approximately 48 potential unit members.

The Joint Petitioners seek an election within a unit comprised of construction and service employees who report to the Indianapolis facility, as well as the facility's mechanics and employees who work in its sheet metal shop. The Employer contends, however, that the only

¹ The undersigned does not adopt the ruling of the hearing officer which revoked in its entirety the subpoena *duces tecum* issued by the Petitioners to the Employer and the ruling which precluded the Petitioners from calling some of its witnesses to testify. In view of the findings herein, however, it does not appear that Petitioners have been prejudiced by these rulings. Other rulings of the hearing officer are affirmed.

appropriate unit is one comprised of field employees who report to all three facilities. The unit found appropriate herein consists of the approximately 350 employees who are employed at the Indianapolis facility. There is no history of collective bargaining involving any of the three facilities.

The Employer's President is its chief operating officer and in addition to other corporate functions, he oversees the daily operations of the Indianapolis facility. Approximately nine Project Managers, who directly supervise members of the petitioned unit, report to the President. The corporate headquarters houses the offices of all corporate officers as well as various administrative departments which provide support services to field operations. Accounting and payroll functions are performed at the corporate headquarters. Capital expenditures are purchased by headquarters staff, while the three facilities purchase the tools and materials necessary to complete projects they staff. The headquarters also houses a human resource department which maintains employee personnel files and which establishes and administers company-wide personnel policies. Also located in the headquarters is a Safety Director who develops and administers safety policies and programs. In addition to "field" employees who perform construction and service work on customer sites, the Indianapolis facility also houses a sheet metal shop whose employees fabricate fixtures used on construction/service projects by the field employees of all three facilities. The parties are in agreement that employees of the shop should be included within a unit of field employees, and they are included within the unit found appropriate herein.

The Indianapolis facility is located approximately 170 miles from the Columbus facility and 110 miles from Erlanger. Columbus and Erlanger are approximately 115 miles apart.²

The Erlanger facility is staffed by an Office Manager³ who is the highest ranking supervisor on site, plus several Project Managers, dispatchers, purchasing agents, salespersons, and approximately 91 field employees. The Columbus facility is staffed by an Office Manager who also serves as a Project Manager, a salesman who also performs the functions of a Project Manager, approximately three other support staff and approximately 48 field employees. Both Office Managers report to the Company's President. Although approximately 80% of the Erlanger and Columbus field employees perform service work, only approximately 15% of Indianapolis employees perform service-related work. The balance of their work involves construction. Each morning field employees report directly to the projects to which they have been assigned, rather than to the facilities.

The Office Managers at Columbus and Erlanger are responsible for the daily operations of their facilities, including the oversight of construction projects and customer service. Beneath the Office Manager at the Columbus and Erlanger facilities and beneath the President at the Indianapolis facility, are persons known as Project Managers. Included among their duties are

² Administrative notice is taken of this latter mileage from the *Rand McNally Standard Highway Mileage Guide*, 1993.

³ Office Managers were interchangeably referred to as "Branch Managers" by the parties at the hearing herein.

sales functions such as preparing bids for projects; the purchase of tools and materials needed to complete bids awarded them; the assignment of field employees to projects; the supervision of work in progress on projects; the closure of jobs; and providing assistance to corporate personnel in collecting payment for completed work. Bids prepared by Project Managers which exceed \$30,000 are submitted to corporate headquarters for review and approval.

Employee wage rates and benefits are the same company-wide. Thus, employees who predominantly perform electrical work and work related to heating, ventilation and air-conditioning, receive an hourly wage between \$14 and \$27. Laborers earn between \$9 and \$14, while Service Technicians earn between \$14 and \$28 per hour. The record does not reflect the wage ranges of other positions within the disputed units. The same retirement, stock-purchase and awards programs are available to all disputed employees. Employees who perform service work are required to wear company-provided uniforms. T-shirts bearing the Employer's name are available to construction employees, but wearing them is optional. Employees of each facility are covered by the laws of the state in which each facility is located for purposes of unemployment and workmen's compensation matters.

The Office Managers of the Columbus and Erlanger facilities enjoy substantial autonomy in the selection and supervision of employees who staff their facilities. Job openings at each facility are generally advertised in local periodicals. For the most part, the phone numbers listed in the advertisements are those of the local facilities⁴, and the Office Managers interview and hire field employees. The Employer's President was the sole witness called to testify by the Employer at hearing. Although he testified that hiring is "done through" the corporate human resource department, he was not asked by his counsel to explain what he meant by this phrase. According to a long-term field employee, the Erlanger Office Manager told him that he has the power to hire and fire. Another employee testified that he was interviewed and hired by the Erlanger Office Manager. Thus, the evidence indicates that each facility possesses the power to hire, and the human resource department may serve an advisory or oversight function.

With rare exceptions the Project Manager who oversees a project also staffs the project. Although the Employer's President initially testified that he and the human resource department assign each of the approximately 489 field employees to each project on which they work, he later testified that Project Managers at each facility determine which employees work on the projects they supervise, with assistance only when necessary from the human resource department. Employees at each facility are generally grouped together into crews, and the same crew(s) usually work for the same Project Manager, from project to project. Project Managers also consider such factors as the skills required by a job, any licensure requirements of the locale in which the job is situated, and the project's distance from the facility, in determining which employees to assign to a given project. When a facility lacks sufficient local manpower to staff a project, assistance is sought from the human resource department.

⁴ The Employer's President acknowledged that upon occasion an advertisement has listed the human resource department's phone number for applicants to contact, rather than the local facility, in order "to avoid some of the harassment we may get from union-related employees."

Field employees are evaluated annually by the Office Manager and/or Project Managers at the facility at which they work. Since at least the year 2000 these evaluations have been written. It appears that the human resource department becomes involved only when an evaluation is controversial or unusual in some respect. The record does not elucidate the role played by the human resource department in such circumstances, however. Consequently, there is no record evidence that the human resource department possesses the authority or has exercised the authority to change or override an evaluation issued by a facility Manager or other Manager who directly observed the employee's work.

The record also indicates that each facility possesses substantial autonomy in the discipline of its employees. The Employer's President was asked one question by his counsel regarding the subject of discipline, and he stated that disciplinary action is "handled" through the corporate human resource department. He was not asked to clarify this testimony by his counsel, however. When questioned by Petitioners' counsel, the President stated that he expects Office Managers to resolve discipline and performance problems on a local level. Employee-witnesses testified that the human resource director may be consulted by the Office Managers or Project Managers about problematic employees and/or may recommend discipline, but there is no evidence that the human resource department makes the final decision in each case whether discipline will issue, or the nature of the discipline. Nor is there evidence that the human resource department conducts an independent review of surrounding circumstances each time one of the Employer's employees is disciplined. To the contrary, according to one employee who testified, the Manager of the Erlanger facility told him he has the power to hire and fire. The employee also testified that he saw the Erlanger Office Manager discipline employees on projects on which he worked, and that the only discipline he witnessed was issued by the Office Manager. This is consistent with testimony of a former Erlanger employee who stated that he was interviewed and hired by the Erlanger Office Manager. In respect to other authority of the Erlanger Office Manager, the employee testified that the Office Manager approved employee vacation requests, and employees reported their absences to him. Thus, it appears that each facility possesses substantial autonomy in supervising its workforce.

There is no evidence of any employee interchange occurring among the three facilities. Thus, there is no evidence that employees from one facility are temporarily transferred to another facility for any reason. Nor is there evidence that employees from one facility have permanently transferred to another facility. Nor is there evidence that the Employer recognizes employee seniority on a corporate-wide basis.

In respect to the amount of contact employees from one facility have with those of the others, the record indicates that periodically employees from two facilities work together on projects. At hearing the Employer offered into evidence a summary which shows the number of manhours that employees of one facility have performed work on some projects with employees from another facility. The document summarizes only hours worked on selective projects, however, and does not purport to show all hours worked by employees of all facilities between January 1, 2000 and March 2, 2001 (the time period covered by the document). Therefore, its evidentiary value is limited. The summary's author acknowledged that employees work full-time without seasonal layoffs. Therefore, the Employer's approximately 489 field employees would

have worked approximately 1,075,800 manhours during this fourteen month period.⁵ The Employer's summary, however, analyzes only 442,273 hours. It omits contracts valued at less than \$5,000 and the Employer acknowledged that such projects are customarily performed by crews comprised only from the facility nearest the location of the work site. In addition, the summary omits all service work orders. Yet approximately 80% of work performed by the Erlanger and Columbus employees is service work. Thus, no meaningful conclusions can be drawn from this summary regarding the extent of employee contact or any other characteristic utilized by the Board to determine the appropriate scope of multi-facility units. Testimonial evidence from employees who have worked on mixed-crew projects, including testimony from one employee who has worked for the Company over seven years, indicates that such contact is not frequent; is often of brief duration; and employees continue to receive supervision from their respective Project or Office Managers, rather than a supervisor from the other facility whose employees are also staffing the job. Other than working together on projects, it appears that employees of the facilities have virtually no contact with each other. There is conclusionary testimony by the Employer's President that employees from Columbus and Erlanger sometimes attend safety training programs at the Indianapolis facility, but no documentary or other corroborative evidence exists to such effect, and the accuracy of the President's recollection in respect to other testimony of alleged joint meetings tends to undermine his testimony on safety meetings. Thus, the President initially testified that employees from Columbus and Erlanger attended a meeting in late 2000 in which health care benefits were discussed. After several employees from Indianapolis testified that they observed no one from other facilities in attendance at the meeting they attended, the Employer corrected the prior testimony by acknowledging that separate health care meetings were conducted at each facility. None of the employee-witnesses who testified has ever visited the Employer's other facilities.

II. DISCUSSION

A single facility unit is presumptively appropriate for purposes of collective bargaining unless a functional integration between two or more facilities exists sufficiently substantial to negate the separate identity of a single-facility unit, Dixie Belle Mills, 139 NLRB 629, 631 (1962); Globe Furniture Rentals, Inc., 298 NLRB 288 (1990). The rationale for this presumption is that a narrowing of the size of a unit maximizes the importance of each employee's vote. The party seeking to overcome the presumptive appropriateness of a single-facility unit must show that the interests of the employees of one facility have merged to such an extent with those of another facility that they have lost their separate identity, Esco Corp., 298 NLRB 837, 839 (1990); Beckett Aviation Corporation, 254 NLRB 88, 89 (1981). Factors examined by the Board to determine whether a single or multi-facility unit is appropriate, include whether there exists a centralized administration and control of labor relations; a similarity between the skills and work functions of the employees; whether the employees share common direct supervision; the extent of operational and employee interchange and employee contact; whether there is a similarity of employee terms and conditions of employment; and the geographical proximity of the facilities. Although common terms and conditions of employment exist among employees at all of the Employer's facilities and there is a centralized administration of labor relations policies, these

⁵ This figure is based upon each employee working 2,200 hours during the fourteen months.

factors fail to rebut the presumptive appropriateness of the single-facility unit given the absence of common direct supervision, the substantial local autonomy of each facility, the lack of employee interchange, the limited degree of employee contact, and the distance between facilities.⁶

The Board has long recognized that certain factors such as common daily supervision and employee interchange have a greater impact upon the creation of a community of interest between two or more groups of employees than other factors such as common terms and conditions of employment, or a centralized control of labor relations. Common supervision creates a community of interest among employees because it has a direct impact upon their work lives, and employees with different supervisors may not necessarily share similar problems or concerns, Towne Ford Sales, 270 NLRB 311 (1984); Beckett Aviation Corp., *Supra* at 89; Renzetti's Market, 238 NLRB 174 (1978). Here, separate supervision is reinforced by the fact that the Managers of each facility possess substantial autonomy in such matters as hiring and discipline, assigning and directing employees' work, approving vacations and other absences from work, as well as conducting formal evaluations of the performance of their employees. The absence of interchange among employees of the three facilities is also an important factor in assessing whether the single-facility presumption has been rebutted, since employees who do not work together or rarely see each other are not likely to experience camaraderie or share a community of interest, First Security Services Corp., 329 NLRB No. 25 (1999), Sl. Op at 2; Oklahoma Blood Institute, Inc., 265 NLRB 1524, 1525 (1982). The significant distances between facilities also militates against the existence of a community of interest among the three groups of employees.

Purolater Courier Corp., 265 NLRB 659 (1982) and Waste Management Northwest, 331 NLRB No. 51 (2000), cases cited by the Employer, are inapposite to the case at hand. In Purolater the Board dismissed the petition on the grounds that Purolater couriers, whom the petitioning union sought to represent, were guards within the meaning of Section 9(b)(3) of the Act. Since the union admitted non-guards to its membership, it was disqualified from representing the couriers, and its petition was therefore dismissed. In *dictum*, the Board concluded that the petitioned unit which was limited to 35 guards employed at the company's Memphis, Tennessee terminal was an inappropriate unit for collective bargaining. Instead, the Board found that all couriers who work within the company's southeast region shared such a close community of interest that the only appropriate unit was a region-wide one. Unlike the case at hand, in Purolater the couriers shared substantial common supervision; extensive contact among couriers from all terminals within the region; and little local autonomy. In Waste Management Northwest, too, the Board found that only a two-facility unit was appropriate because of a lack of local autonomy, common supervision among the employees of both facilities, identical skills and duties among the employees, and interaction between the two groups of employees.

⁶ Although Indianapolis employees perform predominantly construction work, while those from Columbus and Erlanger perform mainly service work, it cannot be concluded that their skills and functions differ substantially since the record does disclose the functions involved in and the skills required by each type of work.

In view of the separate supervision of employees at the three facilities, the substantial local autonomy enjoyed by each facility, the absence of employee interchange, the limited extent of employee contact, the distances between the facilities, and the absence of a history of collective-bargaining on a multi-facility basis, it is concluded that field employees who are employed at the Employer's Indianapolis, Indiana facility constitute a unit appropriate for purposes of collective bargaining.

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the above unit, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Since the Employer is a contractor in the construction industry, voter eligibility shall be determined by the formula established by the Board in Steiny & Co., 308 NLRB 1323 (1992), reaffirming Daniel Construction Co., 133 NLRB 264 (1964).

Eligible to vote are those employees who:

(a) were employed within the above unit during the payroll period ending immediately preceding the date of this Decision, or

(b) have been employed for a total of 30 days or more within the above unit within a period of 12 months immediately preceding such eligibility date, or

(c) have been employed within the above unit during the 12 months immediately preceding such eligibility date for less than 30 days, but for at least 45 days during the 24 months immediately preceding such eligibility date, and

(d) have not been terminated for cause or quit voluntarily prior to the completion of the last project for which they were employed.

Those in the military service of the United States may vote if they appear in person at the polls. In addition to those employees who have been terminated for cause or voluntarily quit, also ineligible to vote are those 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 the employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Sheet Metal Workers' International Association, Local Union No. 20, a/w Sheet Metal Workers' International Association, AFL-CIO and the International Brotherhood of Electrical Workers Local Union No. 481, a/w International Brotherhood of Electrical Workers, AFL-CIO and the Indiana State Pipetrades Association and its affiliate Local Union No. 440 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, a/w United Association of Journeymen and

Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO.

IV. LIST OF VOTERS

To insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right 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 directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **March 30, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

V. 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 April 6, 2001.

DATED AT Indianapolis, Indiana, this 23rd day of March, 2001.

/s/ Roberto G. Chavarry
Roberto G. Chavarry,
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