

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

In the Matter of

CAPE COD PLASTERING, INC.

Employer

and

INTERNATIONAL UNION OF BRICKLAYERS & ALLIED
CRAFT WORKERS, LOCAL NO. 1, AFL-CIO, CLC and
INTERNATIONAL UNION OF BRICKLAYERS & ALLIED
CRAFT WORKERS, LOCAL NO. 3, AFL-CIO, CLC

Joint Petitioners

and

OPERATIVE PLASTERERS AND CEMENT MASONS
INTERNATIONAL ASSOCIATION OF THE UNITED
STATES & CANADA, LOCAL NO. 534, AFL-CIO, CLC

Intervenor

Case 1-RC-21521

In the Matter of

CAPE COD PLASTERING, INC.

Employer

and

OPERATIVE PLASTERERS AND CEMENT MASONS
INTERNATIONAL ASSOCIATION OF THE UNITED
STATES & CANADA, LOCAL NO. 534, AFL-CIO, CLC

Petitioner

and

INTERNATIONAL UNION OF BRICKLAYERS & ALLIED
CRAFT WORKERS, LOCAL NO. 1, AFL-CIO, CLC and
INTERNATIONAL UNION OF BRICKLAYERS & ALLIED
CRAFT WORKERS, LOCAL NO. 3, AFL-CIO, CLC

Joint Intervenors

and

OPERATIVE PLASTERERS AND CEMENT MASONS
INTERNATIONAL ASSOCIATION OF THE UNITED
STATES & CANADA, LOCAL NO. 40, AFL-CIO, CLC

Intervenor

Case 1-RC-21536

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, hearings were held before a hearing officer of the National Labor Relations Board.¹

In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find:

¹ Cases 1-RC-21521 and 1-RC-21536, which involve the same petitioned-for unit bargaining are hereby consolidated for decision.

1. The hearing officer's rulings made at the hearings 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 here.
3. The labor organizations involved 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 Employer, which is located in New Bedford, Massachusetts, is a plastering and drywall contractor. The Joint Petitioners in Case 1-RC-21521 (Bricklayers Local 1 and Bricklayers Local 3) and the Petitioner in Case 1-RC-21536 (Operative Plasterers Local 534) seek to represent all full-time and regular part-time plasterers employed by the Employer from its New Bedford, Massachusetts location, except when they work in Connecticut and Rhode Island. The Employer and the Intervenor in Case 1-RC-21536 (Operative Plasterers Local 40) concur in the appropriateness of this unit.²

The Employer does approximately 95 percent of its plastering work in Massachusetts and the remainder in Rhode Island. The bulk of the plastering work is performed by a core group of approximately 20 plasterers who are hired on a permanent basis rather than job-to-job. They work under common supervision and enjoy substantially the same wages and benefits. Historically, the Employer has been party to collective-bargaining agreements with all the labor organizations party to these consolidated cases. These agreements cover defined territories, none of which overlaps with another. They have all been 8(f) agreements, except for the current agreement of Operative Plasterers Local 40, which is based on the Section 9(a) status of that labor organization. The term of this latter agreement runs from June 4, 2001 until June 6, 2004. The unit covered by this agreement is defined territorially and is limited to the Employer's plasterers when working in Connecticut and Rhode Island.

Where, as here, an employer in the construction industry performs work through employees who are hired on a permanent basis and are subject to the same terms and conditions of employment, a unit defined without reference to a particular geographic area is normally appropriate. See *Alley Drywall, Inc.*, 333 NLRB No. 132 (2001). However, in this case, effect must be given to the Board's contract-bar doctrine, in light of Local 40's valid Section 9(a) agreement. *Hexton Furniture Co.*, 111 NLRB 342 (1955). Therefore, as the parties recognize, the unit found appropriate may not include the Employer's plasterers when they work on jobsites located in either Connecticut or Rhode Island.

² Local 40 does not seek to appear on the ballot.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time plasterers employed by the Employer from its New Bedford, Massachusetts location, except when working on jobsites located in Connecticut or Rhode Island and excluding all other employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION³

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. In determining unit membership, hours worked on jobsites located in either Connecticut or Rhode Island shall not be taken into account. Eligible to vote are those 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 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.

Also eligible to vote are those employees who have been employed for a total of 30 working days or more within the period of 12 months immediately preceding the eligibility date for the election, or who have some employment in that period and have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.

Those eligible shall vote whether or not they desire to be represented by: (1) International Union of Bricklayers & Allied Craft Workers, Local No. 1, AFL-CIO, CLC and International Union of Bricklayers & Allied Craft Workers, Local No. 3, AFL-CIO, CLC, as joint representatives; or (2) Operative Plasterers and Cement Masons International Association of the United States & Canada, Local No. 534, AFL-CIO, CLC.

³ Because the Employer is engaged in the construction industry, the eligibility of voters will be determined by the formula in Daniel Construction Co., 133 NLRB 264 (1961), and Steiny & Co., 308 NLRB 1323 (1992).

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the 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 Co., 394 U. S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before August 16, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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 August 23, 2002.

/s/ Rosemary Pye
Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street - Room 601
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 9th of August, 2002

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