

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

MARCONI CONSTRUCTION COMPANY, INC.<sup>1</sup>

Employer

and

NEW ENGLAND REGIONAL COUNCIL OF  
CARPENTERS

Petitioner

Case No. 34-RC-1981

DECISION AND ORDER

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, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; and the labor organization involved claims to represent certain employees of the Employer.

New England Regional Council of Carpenters (herein called the Petitioner) seeks to represent a unit composed of all of the approximately 17 carpenters and apprentice carpenters employed by Marconi Construction Company, Inc. (herein called the Employer) working out of its sole facility located in Hartford, Connecticut. The petitioned-for unit includes approximately 10 carpenters employed by the Employer on the New Haven, Connecticut Sound School project, who are under the terms of a Project Labor Agreement (PLA). Although otherwise in accord as to the composition and scope of the unit, the Employer contends that the unit is not appropriate because

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<sup>1</sup> The Employer's name appears as corrected at hearing.

the carpenters employed at the Sound School project (herein called the Sound School carpenters) do not share a sufficient community of interest to be included in the unit with its other carpenters and because they have no reasonable expectancy of retention after the conclusion of the Sound School project in December 2002.<sup>2</sup> For the reasons noted below, I find merit in the Employer's contention that the petitioned for unit is inappropriate because the Sound School carpenters do not share a sufficient community of interest with the other petitioned-for carpenters employed by the Employer. Under such circumstances, I further find no 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. Overall Operations.

The Employer, a Connecticut corporation with its office and place of business located in Hartford, Connecticut, functions as both a general contractor and as a contractor on residential, commercial and school construction projects throughout the State of Connecticut. It regularly employs approximately 7 carpenters (herein called the Hartford carpenters) who perform a variety of carpentry work on its various projects. Its remaining carpenters consist of the approximately 10 disputed employees working on the Sound School project.

General Manager Dean Murray provides oversight of the Employer's day-to-day office operations, including the procurement of work and materials and subcontracting. Part owner and Vice President Salvatore Campiella provides overall supervision and management of the employees working on each project, with the ultimate authority to hire, fire and lay off employees. Four project supervisors are responsible for directly supervising and coordinating the work performed at each project. One of the four project supervisors, Bob Boxall, is assigned solely to the Sound School project. The remaining three project supervisors are assigned to the Employer's other projects.

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<sup>2</sup> In its post-hearing brief, the Employer has raised a question as to the eligibility of two laborers employed by the Employer. In view of my determination herein, I find it unnecessary to resolve this matter.

## 2. The Hartford carpenters

As noted above, the Employer maintains a core group of approximately 7 carpenters to perform carpentry work. The Hartford carpenters are hired through advertisements with the expectation that they will be transferred from project to project. They perform traditional carpentry work, including rough framing, some sheet rocking, finish work, and installing doors and hardware, and also perform some roofing and clean-up work. The Hartford carpenters work with each other and two laborers, who also perform some light carpentry work. There is no history of collective bargaining for the Hartford carpenters.

The Hartford carpenters work under the overall supervision of part owner and Vice President Campiella, who assigns them to the Employer's various projects on a daily basis. In this regard, the Hartford carpenters are shifted from project to project as they are needed. However, none of the Hartford carpenters have ever worked on the Sound School project nor have they ever worked under the supervision of Sound School Project Supervisor Boxall. If a project has a project supervisor, the Hartford carpenters work is assigned and directed by the project supervisor on site. On a project with no project supervisor, Campiella assigns their work. The Hartford carpenters may report directly to their assigned job site or directly to the Hartford office in order to pick up equipment before reporting to their job site. Although the Employer may vary their work shifts based on the needs of a project, the Hartford carpenters generally work a 7:00 a.m. to 3:30 p.m. shift. Each Hartford carpenter maintains his own time records and turns in a time sheet to the Employer on Mondays.

The Hartford carpenters earn a minimum of \$22.00 an hour, with several earning in excess of that rate. If they are assigned to a "prevailing rate" project, they receive the prevailing wage rate only if it is higher than their normal hourly rate.<sup>3</sup> As set forth in the Employer's "Employee Benefit Outline", the Employer provides the Hartford carpenters with vacation benefits at the discretion of Campiella, medical, dental and life insurance at no cost, a profit sharing plan, and a 401(k) plan to which the employee may contribute. The Hartford carpenters must provide their own hand and power tools, and

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<sup>3</sup> Prevailing wage rate projects are publicly funded projects on which the Employer would be required to pay a set prevailing wage rate to its employees working on the project.

they are required to attend monthly safety meetings at the Employer's Hartford office. Paychecks are available to the Hartford carpenters at the Hartford office on Thursday nights, otherwise the paychecks are distributed by the project supervisors on Fridays.

3. The Sound School Carpenters.

The Sound School project is a public school construction project located in New Haven, Connecticut. Gilbane Building Company is the project manager and Turner Construction is the construction manager. In about February 2002, the Employer contracted with the City of New Haven Board of Education School Construction Program to perform carpentry work on the Sound School project. As a condition to its contract, the Employer was required to sign a PLA governing work on the project. Also signatory to the PLA are various construction trade unions, including the Petitioner's Local 24. The PLA specifically incorporates by reference, inter alia, the terms of Local 24's collective bargaining agreement with the Connecticut Construction Industries Association, Inc. and the AGC/CCIA Building Contractors Labor Division of Connecticut, Inc. The PLA also requires the Employer to recognize Local 24 as the sole and exclusive bargaining representative of all carpenters it employs on the Sound School project. As a result of this PLA requirement, all the Sound School carpenters have been hired exclusively through Local 24's hiring hall. The Sound School carpenters have never worked on any of the Employer's other projects. In this regard, the Employer has laid off Hartford carpenters while retaining Sound School carpenters, and vice versa. The Employer's work on the Sound School project is scheduled to be completed by December 2002.

The PLA and the collective bargaining agreement govern all terms and conditions of employment of the Sound School carpenters. Thus, unlike the Hartford carpenters who receive a wage rate determined by Campiella, the Sound School carpenters are paid the wage rate of \$23.70 as specified in the collective bargaining agreement. Instead of receiving the Employer paid medical, dental and life insurance benefits, the Employer pays the Sound School carpenters an additional \$8 per hour for benefits to various funds including, among others, the Connecticut Carpenters Pension Fund and Supplemental Pension Annuity, Connecticut Carpenters Health Fund and Carpenters Local 24 Apprenticeship and Training Fund that are enumerated in the

collective bargaining agreement. Other benefits, such as vacation time and paid holidays that are not uniformly provided by the Employer to its Hartford carpenters, are provided by the Employer to the Sound School carpenters as required by the collective bargaining agreement and the PLA. The Employer maintains separate payroll records for compensating the Sound School carpenters, and their paychecks are required by the collective bargaining agreement to be delivered to employees no later than 2:00 p.m. on Thursdays. Furthermore, working hours and shifts for the Sound School carpenters are determined by the collective bargaining agreement. The Employer's overtime policy for the Hartford carpenters differs from the Sound School carpenter's eligibility for overtime, which is paid according to the terms of the collective bargaining agreement. The Sound School carpenters report directly to the Sound School project, and they have never reported directly to the Employer's Hartford office. Unlike the Hartford carpenters who keep track of their own time records on a weekly basis, Sound School carpenters sign in and out of work on a daily basis at the job site.

While working on their project, the Sound School carpenters do not receive their work assignments from Campiella or Project Supervisor Boxall. Rather, they report to an immediate working foreman, also a member of Local 24, who directs their work in accordance with assignments determined by Boxall. The assignment of a working foreman to the project is required by the collective bargaining agreement. The Hartford carpenters do not work under the direction of a working foreman. Unlike the Hartford carpenters, the Employer is required to provide power tools to Sound School carpenters. Any required safety training is provided to the Sound School carpenters at the job site by Turner Construction. The Sound School carpenters are not required to attend, nor have they ever attended, the Employer's monthly safety meeting held at the Hartford office for the Hartford carpenters. Finally, the record reflects no work-related contact between the Sound School carpenters and the Hartford carpenters.

#### 4. Applicable Legal Standard.

It is well established that an employer-wide unit is presumptively appropriate for the purposes of collective bargaining, and it is an employer's burden to establish that a petitioned-for employer-wide unit is inappropriate. *Greenhorne & O'Mara, Inc.*, 326 NLRB 514 (1998) and cites therein. In this regard, in determining an appropriate unit in

the construction industry, the Board seeks to ensure employee self-determination, promote freedom of choice in collective bargaining, and advance industrial peace and stability. *Dezcon, Inc*, 295 NLRB 109, 111 (1989). When faced with more than one location of a single construction employer, the Board determines the appropriateness of the petitioned-for unit by examining bargaining history; functional integration of operations; similarity of employee skills, functions, and working conditions; centralized control of labor relations and supervision; and interchange of employees among construction sites. *Id.* See also *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). Specific factors which the Board has considered in determining that a petitioned-for unit in any industry is not appropriate include differences in compensation, hours of work, benefits, supervision, training and skills; infrequent contact and lack of integration with other employees; and historically separate bargaining units. *Banknote Corp. of America v. NLRB*, 84 F.3d 637, 648 (2<sup>nd</sup> Cir. 1996), citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962), and *Staten Island Hospital v. NLRB*, 24 F.3d 450, 455 (2<sup>nd</sup> Cir. 1994).

#### 5. Conclusion

As previously noted, based upon the above and the record as a whole, I conclude that the Sound School carpenters do not share a sufficient community of interest with the Hartford carpenters to warrant their inclusion in a single unit. In reaching this conclusion, I note that although an employer-wide unit is presumptively appropriate, the Employer has met its burden in rebutting this presumption. More specifically, although the Sound School carpenters and Hartford carpenters share common skills and there is centralized control of labor relations and common overall supervision by Campiella, all other relevant factors support a finding that the Sound School carpenters lack a sufficient community of interest with the Hartford carpenters. In this regard, the Employer has operated the Sound School project from its very outset as a separate and distinct part of its overall operations, resulting in separate immediate supervision and a complete lack of any interchange, transfer or contact between the Sound School carpenters and the Hartford carpenters. Moreover, the applicability of the PLA and the collective bargaining agreement has resulted in a separate bargaining history for the Sound School carpenters, distinctly separate terms and conditions of

employment, methods of compensation, fringe benefits, working conditions, and personnel practices.<sup>4</sup>

Accordingly, I find that the petitioned-for unit is inappropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act. Although the Petitioner was specifically afforded an opportunity to express whether it would proceed to an election in an alternative unit, and indicated at the hearing that it would do so in its post-hearing brief, the Petitioner has not done so. Therefore, in view of the Petitioner's specific failure to indicate a willingness to proceed to an election in an alternative unit, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed in this matter is dismissed.

Right to Request Review

Upon 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 14<sup>th</sup> Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by October 22, 2002.

Dated at Hartford, Connecticut, this 9th day of October, 2002.

/s/ Peter B. Hoffman

Peter B. Hoffman, Regional Director  
Region 34  
National Labor Relations Board

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401-7550  
440-3350-0100

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<sup>4</sup> In view of my determination that the Sound School carpenters do not share a community of interest with the Hartford carpenters, I find it unnecessary to decide whether the Sound School carpenters lack a reasonable expectancy of retention beyond the completion of the project in December 2002.