

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

**ARBOR CONSTRUCTION PERSONNEL, INC.<sup>1</sup>**

**Employer**

**and**

**Case 7-RC-22440**

**LOCAL 9, INTERNATIONAL UNION OF BRICKLAYERS  
AND ALLIED CRAFTWORKERS, AFL-CIO<sup>2</sup>**

**Petitioner**

**and**

**LOCAL 67, OPERATIVE PLASTERERS' AND CEMENT  
MASONS' INTERNATIONAL ASSOCIATION OF THE  
UNITED STATES AND CANADA, AFL-CIO**

**Intervenor**

**APPEARANCES:**

Garrett Wickham, of Ann Arbor, Michigan, for the Employer.  
John Adam, Attorney, of Southfield, Michigan, for the Petitioner.  
Eric Frankie, Attorney, of Detroit, Michigan, for the Intervenor.

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

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<sup>1</sup> The name of the Employer appears as amended at the hearing. The Employer contends that it is a single employer with Acoustic Ceiling and Partition. Since resolution of that issue is not relevant to the issues raised in this case and the record evidence is insufficient to make a determination, I do not make a finding as to the single employer status.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

Upon the entire record in this proceeding<sup>3</sup>, the undersigned finds:

1. The hearing officer's rulings made at the hearing 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 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 Sections 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of approximately three full-time and regular part-time plasterers employed by the Employer working at or out of its facility located at 3500 East Ellsworth Road, Ann Arbor, Michigan; but excluding all carpenters, laborers, managers, guards, and supervisors as defined in the Act. The Employer and the Intervenor are parties to an existing collective bargaining agreement effective from June 1, 2000 to May 31, 2003. The Intervenor, while conceding that the petition was filed during the window period of its existing contract with the Employer, asserts that the existing contract bars the instant petition based on the composition of the bargaining unit and the Employer's multi-employer relationship with the Intervenor. The Intervenor further contends that the petitioned-for unit is inappropriate and that the only appropriate unit is a multi-employer unit.

Contrary to the assertions by the Intervenor, I find there is no contract bar because the petition was filed during the window period, and I find that the appropriate unit is limited to the Employer's employees.

The Washtenaw Contractors Association (WCA), is a multi-employer association formed for purposes of collective bargaining. The Employer is a member of WCA and has delegated its authority to WCA to negotiate and sign collective bargaining agreements with the Petitioner. WCA and the Petitioner are presently parties to a Section 8(f) agreement effective by its terms from August 1, 2000 through July 31, 2003. This Section 8(f) agreement covers work performed in certain areas in the State of Michigan, including all of Washtenaw County and eight townships in Livingston County.<sup>4</sup> The

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<sup>3</sup> The Petitioner and Intervenor filed briefs, which were carefully considered.

<sup>4</sup> The eight townships are Unadilla, Putnam, Hamburg, Green Oak, Iosco, Marion, Genoa, and Brighton Township (including the city of Brighton).

Employer, through WCA, and the Petitioner have enjoyed a collective bargaining relationship since about 1985.

The Architectural Contractors Trade Association (ACT), formerly known as the Detroit Association of Wall & Ceiling Contractors, is a multi-employer association formed for purposes of collective bargaining. ACT is made up of 49 or 50 contractors employing over 2000 employees in different skilled trades. ACT and the Intervenor were parties to a Section 8(f) agreement effective by its terms from June 1, 1997 through May 31, 2000. Prior to this agreement, on November 9, 1995, the Employer, through its President Garrett Wickham, executed a power of attorney to ACT delegating authority to ACT to negotiate and sign collective bargaining agreements with the Intervenor. The power of attorney recites that it is for an indefinite period subject to written notice of cancellation.

ACT and the Intervenor are parties to a Section 9(a) agreement effective by its terms from August 1, 2000 through May 31, 2003. This agreement covered work performed in certain areas in the State of Michigan including Wayne, Oakland, Lapeer, Macomb, and St. Clair counties. At the end of November 2000, ACT and the Intervenor signed an “Agreement to Amend Collective Bargaining Agreement” which expanded the territorial coverage of the 2000-2003 agreement to additionally include the counties of Washtenaw and Sanilac and portions of Livingston County.<sup>5</sup> The Employer does not recall signing the amendment to the collective bargaining agreement and has continued to apply the jurisdictional territories set forth in the 2000-2003 agreement. That is, the Employer follows the contract with the Petitioner when working in Washtenaw and Livingston Counties and follows the contract with the Intervenor when working in Wayne, Oakland, Lapeer, Macomb, and St. Clair counties. The Employer, through ACT, and the Intervenor have enjoyed a collective bargaining relationship since about 1985.

Although the ACT and the Intervenor are the parties to the 2000-2003 agreement, ACT entered into the contract as the bargaining agent on behalf of its individual members, who themselves are referred to in the contract as the “employer” of the unit employees. The recognition clause of the agreement specifically provides that

“The Employer hereby recognizes Local 67 as the sole Collective Bargaining Agent for all journeymen and apprentice plasterers in the employment of the Employer with respect to wages, hours and other terms and conditions of employment on any and all work described in this agreement whenever performed.

“Each Employer, in response to the Union’s claim that it represents a majority of each Employer’s employees acknowledges and agrees that there is no good faith doubt

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<sup>5</sup> The amendment covers Livingston County, excluding the townships of Conway, Cohoctah, Deerfield, Handy, Hartland, Osceola, Tyrone, Howell Township and the city of Howell.

that the Union has been authorized to, and in fact does, represent such majority of employees.

“The Employer agrees to recognize, in such case, the Plasterers’ & Cement Masons Local 67 as the majority representative of its Employees pursuant to Section 9(a) of the Labor Management Relations Act. They are now or hereafter the sole and exclusive collective bargaining representatives for the employees in the bargaining unit with respect to wages, hours of work and all other terms and conditions of employment.” (Emphasis added).

No evidence was adduced at the hearing that indicates ACT and Local 67 intended to create, despite the language recited above, a multi-employer unit.

While conceding that the instant petition was filed during the window period of the existing contract between the ACT and Intervenor, the Intervenor contends that its collective bargaining agreement with ACT dated 2000-2003 is a Section 9(a) pact that, by virtue of its existence as an agreement binding multi-employers, bars the instant petition. I find that whether the existing collective bargaining agreement effective from June 1, 2000 to May 31, 2003 is a Section 8(f) or 9(a) agreement is insignificant. Given the timing of the filing of the petition on March 28, 2003, within the window period of the contract, the agreement, even if a Section 9(a) contract, will not act as a bar to the instant petition.<sup>6</sup> Alternatively, if the agreement is a Section 8(f) contract, it will not serve as a bar to a petition filed at any time pursuant to Section 9(c). *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d (3d Cir. 1988), cert. denied 488 U.S. 889 (1998).

Thus, the only issue left for consideration is whether the petitioned-for single-employer unit is appropriate, as asserted by the Petitioner. The Intervenor asserts that an overall multi-employer unit is the only appropriate bargaining unit in view of the long history of multi-employer collective bargaining between ACT and the Intervenor.

The general rule is that a single-employer unit is presumptively appropriate. Thus, to establish a contested claim for a broader unit, a controlling history of collective bargaining on a multi-employer basis must be shown. *Central Transport, Inc.*, 328 NLRB 407 (1999); *Cab Operating Corp.*, 153 NLRB 878, 879-880 (1965); *Bennett Stone Co.*, 139 NLRB 1422, 1424 (1962); *Chicago Metropolitan Home Builders Association*, 119 NLRB 11184 (1958). The “ultimate question ... is the actual intent of the parties.” *Van Eerden Co.* 154 NLRB 496 (1965).

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<sup>6</sup> To be timely with respect to an existing 9(a) contract, the petition must be filed more than 60 days but less than 90 days before the expiration date of the contract. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962).

As the foregoing language from the recognition clause indicates, the clear intent of the ACT and Intervenor was to create single-employer bargaining units governed by Section 9(a) upon the demonstration of majority status as to each individual employer's employees. Recognition was not granted by the ACT itself to the Intervenor, as was the case in the contract between the WAC and the Petitioner, which is more indicative of an intent to create a multi-employer unit.<sup>7</sup> In contrast, the recognition clause in the ACT contract specifically provides that ACT is acting merely as the bargaining agent of its constituent members and the unit was defined in terms of each employer. Absent testimony or evidence that the parties nevertheless intended to create a multi-employer unit, I find the above language supports the presumption of a single-employer unit.

5. Based on the foregoing reasons, and the record as a whole, I find that the following employees constitute an appropriate unit of employees for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time plasterers employed by the Employer working at or out of its facility located at 3500 East Ellsworth Road, Ann Arbor, Michigan; but excluding all carpenters, laborers, managers, guards, and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.<sup>8</sup>

Dated at Detroit, Michigan, this 9<sup>th</sup> day of May 2003.

(SEAL)

/s/ Joseph A. Barker  
Joseph A. Barker  
Acting Regional Director  
National Labor Relations Board  
Region Seven  
Patrick V. McNamara Federal Building  
477 Michigan Avenue-Room 300  
Detroit, MI 48226

Classification

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<sup>7</sup> Article 1: Recognition of the WAC contract reads: "The Association recognizes the Union as the sole collective bargaining agent...."

<sup>8</sup> The parties agree that the construction industry eligibility formula set forth in *Daniel Construction Co.*, 133 NLRB 264 (1961), is applicable to this case.