

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

ALLIED MAINTENANCE  
TECHNOLOGIES, INC.

Employer

and

Case 4-RC-20815

METROPOLITAN REGIONAL  
COUNCIL OF CARPENTERS,  
SOUTHEASTERN PENNSYLVANIA,  
STATE OF DELAWARE AND  
EASTERN SHORE OF MARYLAND  
a/w UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS

Petitioner

**REGIONAL DIRECTOR'S DECISION  
AND DIRECTION OF ELECTION**

The Employer, Allied Maintenance Technologies, is a construction contractor that performs new construction, renovations, and demolition work. The Petitioner, Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's journeyman and apprentice carpenters.

A hearing officer of the Board held a hearing to determine whether the Employer is engaged in sufficient interstate commerce to warrant the assertion of jurisdiction. The Employer did not appear at the hearing nor provide any evidence. Neither party filed a brief.

After considering the evidence presented by the Petitioner's witnesses, as well as official business reports concerning the extent of the Employer's business activities, I conclude that the Employer is engaged in interstate commerce. I have also found that the Petitioner is a labor organization within the meaning of the Act, that there is no contract bar to the petition, and that the petitioned-for unit is appropriate. Accordingly, I have decided to direct an election in the petitioned-for unit.

**I. NOTICE OF HEARING TO THE EMPLOYER**

On April 9, 2004,<sup>1</sup> Region 4 of the National Labor Relations Board (the Region) served the Employer with a Notice of Representation Hearing and related documents, including the Board's Commerce Questionnaire, by first class mail. These documents were mailed to a Bethlehem, Pennsylvania address that the Employer had used as the return address on a letter to the Petitioner dated March 25, 2004. On April 9, the Region also faxed these documents to the Employer using a fax number listed on the same letter. The Notice of Representation Hearing indicated that a hearing was scheduled for April 19. On April 12, in a telephone conversation with a Board Agent, the Employer's Vice President, Jeffrey Smith, stated that the Employer had moved its offices to a new address several months earlier and had not received the documents sent by the Region. During that conversation, the Board Agent told Smith about the scheduling of the representation hearing. On April 14, the Region again faxed the petition and related documents to the Employer's fax number, which remained unchanged, and on April 15, the Region again sent copies of all documents by first class mail to the Employer's new address in Center Valley, Pennsylvania. The Region received fax confirmation documents for both the April 9 and the April 14 faxes.

The Employer did not appear at the April 19 hearing or file a request for postponement of the hearing. The Employer also did not submit the Commerce Questionnaire to the Region.

## **II. JURISDICTION**

### *Facts*

The Employer currently employs 13 journeyman carpenters on a regular basis and uses apprentice carpenters as needed.<sup>2</sup> The Employer has recently employed four or five apprentice carpenters, but none were employed at the time of the hearing. Journeyman carpenter Robert Overpeck testified that during the past year he has worked almost exclusively at a jobsite in Bethlehem, Pennsylvania, renovating a three-story building for Agere Systems Inc. The Employer's work on this site includes structural reconfiguration, demolition necessitated by the renovations, and some new construction, including the addition of loading docks. Overpeck continues to work at the Agere site on a full-time, 40 hour-per-week basis. He earns an hourly rate of \$26.18 plus benefits, and over the past year he earned gross wages of about \$54,000.<sup>3</sup> Overpeck did not indicate how many other Allied employees are also working at the Agere site, but it is unlikely that he is working alone on a job of this size and duration. Based on his 22 years of industry experience, Overpeck estimated that the cost of the Agere project was several million dollars.

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<sup>1</sup> All dates are in 2004 unless otherwise indicated.

<sup>2</sup> The latest Dun & Bradstreet Business Information Report, of which I take administrative notice, indicates that the Employer's business started in 1957, and the company incorporated in 1974. The Report further states that the Employer has 30 to 50 employees and owns a 25,000 square foot two-story building.

<sup>3</sup> The Employer pays Overpeck pursuant to its Section 8(f) agreement with the Petitioner, which is discussed in Section V of this Decision.

On several occasions, Overpeck purchased supplies and materials for the Agere project from Home Depot, Tri-State Gypsum, and a supplier identified only as Granges. As the Employer was billed directly for these purchases, Overpeck was unaware of their cost. He has observed the delivery to the jobsite of numerous truckloads of drywall, studs, and insulation materials and estimates the value of these items as exceeding \$100,000. Overpeck has installed at least 300 sheets of ¾-inch plywood on the Agere job at an estimated cost of \$30 each (\$9,000). He also has observed on-site use of about 1,000 wooden shipping crates, valued at roughly \$25 each (\$25,000), about 400 “2 by 4s” at a cost of about \$3.50 each (\$1,400), and about 200 furring strips at \$1.50 each (\$300). The Petitioner’s Business Representative, Michael Galio, who has worked in the industry for 29 years, testified that he is unaware of any manufacturer of lumber or wood building materials in Pennsylvania. Overpeck also stated that the Agere job included the installation of 200 metal frame steel doors, valued at \$300 each (\$60,000), but he did not identify the supplier of the doors. Finally, Overpeck testified that the Employer purchased electric pallet jacks and an electric forklift from Agere at the site. He estimated the forklift value at \$10,000 but gave no estimate for the pallet jacks.

According to the most recent Dun & Bradstreet Business Information Report and the company’s website, Agere sells integrated circuit solutions for computing and communications applications. It maintains headquarters in Allentown, Pennsylvania and has locations in seven states and overseas. Agere’s product sales for the calendar year 2003 were in excess of \$1 billion.

Overpeck also testified that he was one of about six employees who worked for a few days on a job in Berkeley Heights, New Jersey for an unidentified customer of the Employer, disassembling office space and transporting the components back to the Bethlehem area. He did not indicate when he worked on that job.

As discussed below, the Employer is party to a Section 8(f) collective-bargaining agreement with the Petitioner with a term of July 1, 2001 through June 30, 2004. In performing his duties relating to that agreement, Business Representative Galio has visited several of the Employer’s jobsites in the past year. Galio has twice visited a jobsite at St. Luke’s Hospital in Bethlehem, where the Employer was performing renovations. He observed that approximately six carpenters worked regularly on that job for a period of six months, and he saw large amounts of building supplies and materials there, including drywall and metal studs. Galio testified that prior to the start of the job, the Employer faxed a “start sheet” to the Petitioner, which listed the cost of the job as exceeding \$1 million. In Galio’s experience, the cost of a construction contract is roughly allocated at one-third labor costs to two-thirds material and supplies’ costs.

The most recent Dun & Bradstreet Business Summary indicates that St. Luke’s Hospital is a nonprofit general medical and surgical hospital with 418 beds. Although the Summary did not list the hospital’s income for the past two years, income for each of the years 2000, 2001, and 2002 exceeded \$200,000,000.

On three occasions, Galio visited two jobsites in Allentown for the Lehigh Valley Hospital, which is a part of the Lehigh Valley Health Network (the Network). Three of the Employer’s carpenters worked at one location for four to five months, and between two and six

carpenters worked at the other location for about five months. On one visit, Galio observed about 320 sheets of stacked drywall awaiting installation, which he valued at approximately \$5 per sheet (\$1,600). 30 solid oak doors, valued at \$200 each (\$6,000), were also installed at these sites. Galio testified that to his knowledge this type of door is not manufactured in Pennsylvania.

The most recent Dun & Bradstreet Business Information Report dated April 19, 2004 for the Lehigh Valley Health Network (the Network) indicates that it is a holding company that operates medical and surgical hospitals and management services through subsidiaries. The Network has five locations in the Allentown area, employs approximately 7,000 employees, and derived gross revenues exceeding \$600 million for the fiscal year ending June 30, 2003.

Galio also visited the Good Shepherd Home in Allentown, the site of renovation work performed by the Employer. According to Galio, four carpenters were employed for a five-month period on that job. The most recent Dun & Bradstreet Business Summary for the Good Shepherd Home, Inc. establishes that its operations include a rehabilitation hospital and a skilled care life residency facility serving the handicapped. Income for the fiscal year ending June 30, 2002, the most recent year listed on the Summary, exceeded \$73 million, and the facility employs over 800 individuals.

#### *Analysis*

In *Tropicana Products*, 122 NLRB 121, 123 (1958), the Board held that jurisdiction may be asserted in any case in which an employer has refused, upon reasonable requests by Board agents, to provide information relevant to the Board's jurisdictional determinations, where the record developed at a hearing, duly noticed, scheduled, and held, demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's discretionary jurisdictional standards. In this case, the Employer's failure to appear at the hearing despite adequate notice, or to submit the Commerce Questionnaire, constitutes a refusal to provide information sufficient to invoke the *Tropicana* rule.<sup>4</sup>

The foregoing evidence demonstrates that the Employer is engaged in interstate commerce sufficient to satisfy the Board's statutory jurisdiction requirement. The Employer regularly employs about 13 journeyman carpenters and also uses apprentices at times. These employees are occasionally sent to work out of state, as indicated by Overpeck's work in New Jersey.

The Employer also performs work in Pennsylvania for customers that clearly meet the Board's commerce standards. In particular, the Employer has a very substantial contract with Agere and has purchased a significant amount of materials for the project, at least some of which were manufactured out of Pennsylvania. Agere is a major corporation operating in seven states and is manifestly engaged directly in interstate commerce. Thus, the Employer's work on the Agere project alone demonstrates statutory jurisdiction.

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<sup>4</sup> See also *Continental Packaging Corp.*, 327 NLRB 400 (1998).

In addition, the Employer has provided services to both St. Luke's and Lehigh Valley Hospitals, with each job requiring several months of work for several employees. In fact, the value of the contract at St. Luke's is estimated to have exceeded \$1 million. Further, while performing renovations for the Good Shepherd Home, the Employer has employed four carpenters for about five months. Based on the Dun & Bradstreet reports, each of these employers in recent years has satisfied the Board's jurisdictional standards for hospitals based on gross revenues, and it may reasonably be inferred that they continue to do so and that they each annually purchase at least \$5,000 of goods and services from out of state.

I therefore find that the Employer is an employer engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

### **III. LABOR ORGANIZATION STATUS**

The Petitioner is a council comprised of a number of Carpenters local unions and is a successor to the Metropolitan Regional Council of Carpenters of Philadelphia and Vicinity.<sup>5</sup> Employee members of these locals participate in monthly meetings and directly elect both local officers and delegates to the council. The Petitioner has negotiated a number of collective-bargaining agreements with various employers and processes grievances on behalf of employees it represents. I therefore find that employees participate in the Petitioner's affairs and that the Petitioner exists for the purpose of dealing with employers concerning employees' terms and conditions of employment. Moreover, the Board has found the Petitioner's predecessor to be a labor organization. *Metropolitan Regional Council of Philadelphia and Vicinity*, 335 NLRB 814, 819 (2001).<sup>6</sup> Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850, 851-852 (1962).

### **IV. COLLECTIVE-BARGAINING HISTORY**

Business Representative Galio testified that in 1999 the Employer became signatory to a Section 8(f) master collective bargaining agreement with the Petitioner's predecessor, Metropolitan Regional Council of Carpenters of Philadelphia and Vicinity. The Employer has continued to abide by successor master agreements. The Employer is also signatory to a Project Labor Agreement with the Petitioner covering the Agere jobsite.<sup>7</sup> By letter dated March 25, 2004, the Employer notified the Petitioner that it did not intend to be bound by future agreements when the current master collective-bargaining agreement expires on June 30, 2004.

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<sup>5</sup> In 2003, the Metropolitan Regional Council of Carpenters of Philadelphia and Vicinity expanded its geographical area, and its name was changed accordingly.

<sup>6</sup> In that case, the Petitioner admitted to labor organization status.

<sup>7</sup> The Agreement signed by the Employer was not produced at the hearing, but another Section 8(f) collective-bargaining agreement, which Galio testified was identical to the one signed by the Employer, was included as an exhibit.

By the instant petition, the Petitioner seeks certification as the collective-bargaining representative of the Employer's journeyman and apprentice carpenters through a Board conducted election under Section 9(a) of the Act. In these circumstances the Section 8(f) collective-bargaining agreements do not act as a bar to the petition. *John Deklewa & Sons, Inc.*, 282 NLRB 1375, 1377 (1987), *enfd.* 843 F. 2d 770 (3<sup>rd</sup> Cir. 1988), *cert denied*, 488 U.S. 889 (1988). Accordingly, there is no contract bar.

## **V. UNIT COMPOSITION**

The Petitioner seeks to represent a unit of the Employer's full-time and regular part-time journeyman and apprentice carpenters, excluding all other employees, including office clerical employees, managerial employees, confidential employees, guards, and supervisors as defined in the Act. The current collective-bargaining agreement has been applied to employees in the petitioned-for unit. As this unit appears to be appropriate, I shall direct an election in the petitioned-for unit.

## **VI. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

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 in this case.
3. The Petitioner 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.
5. 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 full-time and regular part-time journeyman and apprentice carpenters employed by the Employer, excluding all other employees, including office clerical employees, managerial employees, confidential employees, guards and supervisors as defined in the Act.

## **VII. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland a/w United Brotherhood of Carpenters and Joiners**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Eligible Voters**

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Additionally, eligible voters include those employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and have been employed for a total of 45 working days within the 24 months preceding the payroll period ending immediately preceding the date of this Decision, and also have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.<sup>8</sup> Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) 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 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

### **B. Employer to Submit List of Eligible Voters**

To ensure 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).

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<sup>8</sup> *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction*, 133 NLRB 264 (1961), modified in 167 NLRB 1078 (1967).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **May 20, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by E-mail to [Region4@NLRB.gov](mailto:Region4@NLRB.gov).<sup>9</sup> Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

## **VIII. 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, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by E-mail. For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **May 27, 2004**.

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<sup>9</sup> See OM 04-43, dated March 30, 2004, for a detailed explanation of requirements that must be met when submitting documents to a Region's electronic mailbox. OM 04-43 is available on the Agency's website at [www.nlr.gov](http://www.nlr.gov).

Signed: May 13, 2004

at Philadelphia, PA

/s/

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DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four