

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

TREVCON CONSTRUCTION COMPANY, INC. ¹	
Employer	
and	CASE 22-RC-070080
REICON GROUP LLC	
Employer	
and	CASE 29-RC-070402
URBAN FOUNDATION/ENGINEERING LLC ²	
Employer	
and	CASE 29-RC-070380
GENERAL CONTRACTORS ASSOCIATION OF NEW YORK, INC.	
Employer	
and	
DOCKBUILDERS LOCAL OF AMALGAMATED CARPENTERS AND JOINERS UNION	
Petitioner	
NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS ³	
Intervenor	

DECISION AND DIRECTION OF ELECTION

I. PROCEDURAL HISTORY

In December 2011, the Petitioner, Dockbuilders Local of Amalgamated Carpenters and Joiners Union (the Petitioner), filed four representation petitions seeking elections in separate bargaining units for four employers pursuant to Section 9(c) of the

¹ The name of the Employer appears as amended at the hearing.

² The name of the Employer appears as amended at the hearing.

³ The name of the Intervenor appears as amended at the hearing.

National Labor Relations Act. On December 16, 2011, the Acting Regional Director issued an Order Consolidating Cases and Rescheduling of the Representation Hearing. (Board Exhibit 1(c)).

At the December 22, 2011 hearing on these petitions, the Petitioner verbally amended its position regarding its petitioned-for bargaining unit, asserting that its petitioned-for unit consists of all employees employed by member employers of the General Contractors Association of New York, Inc. (GCA), an association of approximately 140-150 employers engaged in heavy construction, to which three of the petitioned for Employers, Urban Foundation/Engineering LLC (Urban Foundation), Reicon Group LLC (Reicon), and Trevcon Construction Company, Inc. (Trevcon) are all members.⁴ With respect to the fourth Employer, Phoenix Marine Company, the Petitioner withdrew its petition in Case 22-RC-070083 on the grounds that Phoenix is not a member of the GCA. At the hearing, the GCA, Urban Foundation, and Reicon also took the position that a multi-employer association is the appropriate unit in this matter. Trevcon deferred to the GCA and/or the Board's position on the instant matter. New York City District Council of Carpenters (the Intervenor) took the position that the appropriate unit is a single employer unit for each of the three petitioned-for employers remaining after the Petitioner withdrew its petition against Phoenix.⁵ At the hearing, the Intervenor also took the position that the Petitioner was not a labor organization within the meaning of Section 2(5) of the Act.

⁴ It is well established Board law that when a petitioner broadens its original unit to one that is substantially larger and different from that originally petitioned for, the broadened unit request is treated like a new petition and must be supported by an adequate showing of interest. *Centennial Development Co.*, 218 NLRB 1284 (1975). The showing of interest is an administrative matter not subject to litigation. *O.D. Jennings & Co.*, 68 NLRB 516 (1946). I take administrative note of the fact that the Petitioner submitted and has met its showing of interest for the multi-employer association unit.

⁵ The District Council was permitted to intervene based on its current collective bargaining agreement (extended via a memorandum of understanding through January 30, 2012), which covers the unit of employees involved herein.

Based on the following facts and analysis, I find that Petitioner is a labor organization within the meaning of Section 2(5) and that a multi-employer unit would be appropriate here. Accordingly, I order an election as set forth below.

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,⁶ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed;
2. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein;⁷
3. The labor organizations involved claim to represent certain employees of the Employers;⁸
4. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act⁹;
5. The following employees of the Employers constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

⁶ Briefs filed by the Petitioner, Intervenor, and a joint brief filed by Urban Foundation, Reicon, and the GCA have been duly considered.

⁷ At the hearing, Reicon and Urban Foundation stipulated that during the preceding twelve months, each Employer purchased and received at its New York locations, goods valued in excess of \$50,000 directly from points located outside the State of New York. Trevcon stipulated that during the preceding twelve months, it purchased and received at its Liberty Corner and South Amboy facilities, goods valued in excess of \$50,000 directly from points located outside the State of New Jersey. The GCA is a corporation consisting of employer-members engaged in heavy construction at various jobsites located in New Jersey and New York, the only jobsites involved herein. During the preceding twelve months, GCA member-employers individually and collectively purchased and received at their various jobsites goods and services valued in excess of \$50,000 directly from points outside of the state in which each member-employer was located.

⁸ The parties stipulated, and I find, that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act.

⁹ The parties stipulated that there are no contract bars to an election in this matter.

All dockbuilders, pier carpenters, shorers, house movers, pile drivers, divers, tenders, foundation workers, drillers and marine constructors employed by the Employer members of the General Contractors Association of New York; excluding all other crafts, guards and supervisors as defined in the Act.¹⁰

II. ISSUES

Petitioner's Labor Organization Status

The record reveals that the Petitioner was formed approximately four months before the date of the hearing. About this same time, the Petitioner affiliated with the International Union of Painters and Allied Trades (IUPAT) and the IUPAT issued the Petitioner a charter.

The Petitioner's Interim Constitution and Bylaws, dated and adopted on November 3, 2011, were introduced into the record at the hearing. The constitution, among other things, requires monthly membership meetings, identifies the titles of all officers in the organization, sets a date for nominations, officer elections,¹¹ and officer installation, and specifies that a "wage negotiating committee" will be established to "...meet with the employees prior to the expiration of all collective bargaining agreements and negotiate such changes as are requested by the membership of the Local Union..." The constitution also specifies that the "rate of wages of Journeyman members, foreman, and general foreman shall be decided upon from time to time through collective bargaining agreements with the employers."

At the hearing, Eric Gundersen testified that he is a "committee member" for the Petitioner. Committee members discuss organizing, bylaw enactment, and how to file for NLRB elections. All committee members who participate in Petitioner affairs work for the three-named Employers here or for other GCA members. The Petitioner does not currently have any collective bargaining agreements with any employers.

¹⁰ The parties stipulated to this unit description at the hearing.

¹¹ Officer elections have not yet been conducted.

The Intervenor asserts that the Petitioner can not be considered a labor organization as defined under Section 2(5) of the Act. In its post-hearing brief, the Intervenor asserts that Gundersen refused to answer questions regarding who else serves on the Petitioner committee that prepared Petitioner's bylaws. The Intervenor further asserts that the Petitioner failed to prove that it exists "at least in part for the purpose of dealing with employers concerning conditions of work." I reject these assertions.

With regard to the labor organization status of the Petitioner, there are essentially only two requirements for a party to meet to achieve the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962). The record reveals that Petitioner was formed for the purpose of dealing with employers concerning wages, rates of pay, hours, and working conditions on behalf of employees it seeks to represent. The record reveals that the Petitioner, at the time of the hearing, had no collective bargaining agreements with any employers. Gundersen, however, testified that committee members, all of whom work for GCA member employers, discussed organizing activities and filing for NLRB elections as Petitioner's bylaws and constitution were being drafted.¹² Additionally, Petitioner's Constitution and bylaws make specific reference to wages, rates of pay, hours of work, and the formation of negotiating committees which have been established to negotiate collective bargaining agreements with employers.

In conclusion, I find that the Petitioner has satisfied the definitional requirements of Section 2(5) of the Act. In this connection, noting that Petitioner intends to bargain on behalf of employees in the event it becomes their representative, I find that the Petitioner

¹² Gundersen's refusal to specifically identify other members of the committee does not invalidate the authenticity of the constitution and bylaws, nor does it impact my determination regarding Petitioner's labor organization status.

is an organization in which employees participate within the meaning of Section 2(5) of the Act. *Grand Lodge International Association of Machinists*, 159 NLRB 137 (1966); *Pittsburgh Limestone Corporation*, 77 NLRB 710 (1948).

Appropriate Scope of the Bargaining Unit

The GCA is a century old Employer association that negotiates collective bargaining agreements with various unions and advances its members' positions on political and business-related matters. The GCA's current membership stands at about 150 employers, all engaged in heavy construction work.¹³ The GCA's most recent collective bargaining agreement with the Intervenor defines heavy construction work as "the construction of engineering structures and building foundations whether land or marine exclusive of the erection of building superstructures....." (Employer exhibit #1). This collective bargaining agreement covers strictly dockbuilder's work as the Intervenor and GCA negotiate separate contracts for dockbuilders, carpenters, and timbermen. This contract sets standardized wage rates, terms and conditions of work, and dispute resolution procedures¹⁴ for all GCA member employers covering Northern and Central New Jersey, New York City, Long Island, and the Hudson Valley up through Albany County. There are approximately 1,200-1,300 employees currently performing dockbuilders work for GCA member employers.

The bargaining relationship between the GCA and the Intervenor is governed by Section 8(f) of the Act. No evidence was adduced at the hearing, and the parties do not contend, that this bargaining relationship ever transitioned to one governed by Section 9(a) of the Act.

¹³ Employer dues paid to the GCA are based on the dollar volume of work performed.

¹⁴ Of note, the collective bargaining agreement's grievance procedure designates a panel, on which a representative of the employer in question can not serve, to hear and resolve grievances.

GCA members sign authorization forms designating the GCA to collectively bargain on their behalf.¹⁵ A subcommittee of the GCA's labor relations committee negotiates collective bargaining agreements with various unions. Once the subcommittee reaches an agreement on a new contract, the terms of the agreement are disseminated among member companies, but no vote is taken by the member companies, and the member companies are bound by the terms negotiated by the subcommittee. Denise Richardson, the GCA's managing director, signs collective bargaining agreements on behalf of the GCA and its member employers. Individual members do not sign collective bargaining agreements and can not negotiate provisions unique only to that member employer.

Some GCA member companies perform all facets of heavy construction work, while other GCA member companies perform more specialized components of this work. For example, some companies just drive piles into the ground while other companies do the concrete work necessary to form the structure's foundation. Brian McLaughlin, a council representative for the Intervenor, testified that Trevcon primarily does marine construction, meaning the construction of piers, docks, and wharfs, but it also performs inland pile and concrete work. Reicon does work similar to Trevcon, but it also does a lot of diving work. Urban Foundation primarily does inland foundation work, meaning a lot of drilling with mini-piles. The record also reveals that some GCA member companies perform work in New York, some perform work in New Jersey, and others perform work in both states.

Employees can obtain work through the Intervenor's hiring hall or directly from contractors. Some employees working for a member employer may be loaned out to

¹⁵ Urban Foundation's GCA authorization is dated December 29, 1995; Trevcon's GCA authorization is dated December 2002; and Reicon's authorizations (two were submitted into evidence) are dated November 8, 2002 and December 20, 2011. All three employers specifically designated the GCA to bargain collectively with the Intervenor.

other employers if work is slow, with the understanding that the employees will return to work for their original employer when needed. Depending on the nature of the job, some employees may only work for an employer for a few days (on a short-term project) but other employees could remain employed with the same employer for several years (on a longer-term project or for an employer with a large and continuous work load). Some dockbuilders will work for several different employers over the course of a year while other dockbuilders will work for the same employer over the same period of time.¹⁶ The record also revealed that GCA employers have their own supervisors, but that some foremen work for the same employer for a period of years, and other foremen work for different employers on a job-to-job basis.

III. LEGAL ANALYSIS

Section 9(b) of the Act provides that “the Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof.”¹⁷ Such objectives are achieved when the members of an appropriate unit share a community of interest in wages, hours and other terms and conditions of employment. Units with extensive bargaining history remain intact unless repugnant to Board policy or interfere with rights guaranteed by the Act. *PJ Dick Contracting, Inc.*, 290 NLRB (1988).

A multiemployer bargaining unit is appropriate where the “the employers involved have evidenced a clear intent to participate in multiemployer bargaining and to

¹⁶ McLaughlin testified that of the dockbuilders he knew, about 30 of them held steady jobs with the same employer over several years.

¹⁷ In the construction industry, the Board presumes that a bargaining relationship is governed by Section 8(f) of the Act. *John Deklawa & Sons*, 282 NLRB 1375 (1987) *enfd. sub nom. Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988). As previously noted, the parties involved this proceeding did not contend that the existing bargaining relationship between the GCA and the Intervenor is governed by Section 9(a) of the Act.

be bound by the actions of the bargaining agent.” *Arbor Construction Personnel, Inc.* 343 NLRB 257 (2004) quoting *Hunts Point Recycling Corp.*, 301 NLRB 751, 752 (1991).

Employees of GCA member employers share a community of interest in wages, hours and other terms and conditions of employment.

Employees of GCA member employers who perform dockbuilders’ work enjoy uniform wage rates, hours, overtime eligibility, safety standards, a myriad of fringe benefit fund contributions, and dispute resolution and arbitration provisions under the most recent collective bargaining agreement between the GCA and the Intervenor (effective July 1, 2006). These contractual provisions cover work performed in a relatively truncated geographic area (parts of New York and New Jersey). Because the Petitioner proposes a multi-employer bargaining unit identical to the one currently covered under the Intervenor’s dockbuilder craft collective bargaining agreement, the record establishes a strong community of interest in wages, hours, and conditions of employment.

The Intervenor relies on *Maramount Corp.*, 310 NLRB 508 (1993) to argue that the disparate work performed by GCA member employers, the geographic diversity of these employers, and the lack of common supervision, fail to satisfy the community of interest test and therefore, make a single employer unit more appropriate. I am not persuaded by this argument and find the facts in *Maramount* distinguishable from the record evidence here.

In *Maramount*, the Employer association had transitioned from a small, garment industry-based association to a sprawling hodgepodge of employers, including employers engaged in auto parts manufacturing, spice preparation and distribution, printing, jewelry, plumbing supply, paper goods, etc. In finding that the existing trade association bargaining unit was no longer appropriate, and single employer units were now more

appropriate, the Board in *Maramount* emphasized that collective bargaining agreements negotiated between the Association and union addressed no industry-specific concerns and contained no riders or supplemental agreements to address concerns on a shop-by-shop basis. The Board stated that “the existing WTA unit is a heterogeneous aggregation of distinct groups of employees with widely differing interests and concerns.”

Maramount Corp., 310 NLRB at 511.

In contrast, although the record evidence here indicates that many GCA member employers perform discrete aspects of heavy construction industry work, what is critical is that all of this work relates to heavy construction (be it marine versus inland or piling versus concrete work), and all of this work falls under the dockbuilder craft and the collective bargaining agreement between the GCA and the Petitioner.

Furthermore, while some GCA employers only perform work in New York and others only perform work in New Jersey, the community of interest relative to working conditions remains strong. GCA employer work performed in New York and New Jersey, and the waterways in between, is subject to the same wages, working conditions, and dispute resolution procedures as outlined in the dockbuilder collective bargaining agreement.

Finally, Petitioner’s reliance on *Maramount* for the proposition that lack of common supervision significantly undermines the legitimacy of a multi-employer unit is misplaced. The Board in *Maramount*, in reaching its conclusion, stated that “there is no evidence of contact among the employees of the various WTA employers, of employee interchange or transfers, of integration of work functions, or of common supervision. The only point of intersection in their terms and conditions of employment has developed from the fact that their employers joined the WTA.” *Maramount Corp.*, 310 NLRB at 511. The Board was emphasizing the fact that automotive workers did not interact with

garment workers or food processing workers, who were all part of the same extant bargaining unit. This lack of community of interest manifested itself through, among other things, no common supervision. Here, the record reflects a more transient dockbuilder workforce with the possibility of working for several different GCA contractors in a year depending on the scope of existing work and the temporary loaning or “borrowing” of employees from one contractor to another. Unlike in *Maramount*, dockbuilder mobility here strengthens the community of interest present and helps minimize any concerns about the geographic scope of the petitioned-for bargaining unit.

GCA member employers have evidenced a clear intent to participate in multi-employer bargaining and to be bound by the actions of their bargaining agent.

A multi-employer bargaining unit is appropriate here because the record evidence makes clear that GCA member employers have delegated bargaining responsibility to the GCA (and its subcommittee) and have agreed to be bound by their agent’s actions. Frank DiMenna, the GCA’s director of labor relations, testified that each member supplies the GCA with an authorization to bargain with various unions on its behalf and these authorizations bind the members to the results achieved by the GCA in bargaining. He further testified that only the GCA subcommittee engages in contract negotiations with unions, the GCA’s managing director signs all collective bargaining agreements, and no member employer may negotiate separate terms and conditions of employment with a union. Finally, DiMenna testified that final negotiated contract terms are not voted on by the employer members for approval. These factors overwhelmingly satisfy the *Arbor Construction* test for finding a multiemployer bargaining unit appropriate. Clearly, GCA members intend to both participate in multi-employer bargaining and be bound by their agent’s actions.

Finally, the GCA's long-standing bargaining relationship with the Intervenor further militates in favor of a multi-employer bargaining unit.¹⁸ These parties have negotiated successive collective bargaining agreements by foregoing individual employer negotiations and locking in wage rates, dispute resolution procedures, and other terms and conditions of work to apply on an association-wide level covering over 1,000 employees in two states. Because this is the same scope of bargaining unit the Petitioner is proposing here, and since the Intervenor has offered no persuasive argument why this bargaining history should be disturbed, or how it is repugnant to the Act, I conclude that given the facts outlined above, the GCA multi-employer association is the appropriate bargaining unit.

Conclusion

Based on the above and the record as a whole, I find that petitioned-for GCA multi-employer bargaining unit to be appropriate and I direct an election as outlined below.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned 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. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off.¹⁹ Employees engaged in an economic strike who have retained their status as strikers and have not

¹⁸ Of note, Urban Foundation's authorization for the GCA to collectively bargain on its behalf with the Intervenor dates back to 1995.

¹⁹ Pursuant to the Board's formula for voter eligibility in the construction industry, unit employees who are not working at any jobsite on the date of the election are eligible to vote if: a) they have been employed for at least 30 days within the 12 months preceding the eligibility date for the election, or b) if they have had some employment during the past 12 months, and they have been employed for 45 days or more within the 24-month period immediately preceding the eligibility date. *Steiny and Company, Inc.* 308 NLRB 1323 (1992).

been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees 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 since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **DOCKBUILDERS LOCAL OF AMALGAMATED CARPENTERS AND JOINERS UNION** or **NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS** or by **NEITHER.**

V. LIST OF VOTERS

In order 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 in 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 hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, 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 in NLRB

Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **January 26, 2012**. 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.

VI. 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, D.C. 20570-0001. The Board in Washington must receive this request by **February 2, 2012**. The request may be filed electronically through E-Gov on the agency's website, www.nlr.gov, but may not be filed by facsimile²⁰.

Signed at Newark, New Jersey this 19th day of January, 2012.


J. Michael Lightner, Regional Director
National Labor Relations Board
Region 22
20 Washington Place- 5th Floor
Newark, New Jersey 07102

²⁰ To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.