

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

**ASSOCIATED GENERAL CONTRACTORS
OF MICHIGAN^{1, 2}**
and

Case 07-RC-064788

**ASSOCIATED CONCRETE CONTRACTORS
OF MICHIGAN**

Case 07-RC-064796

and

**CONSTRUCTION ASSOCIATION OF
MICHIGAN**

Case 07-RC-064723

Employers

and

**LOCAL 514, OPERATIVE PLASTERERS'
AND CEMENT MASONS' INTERNATIONAL
ASSOCIATION OF THE UNITED STATES
AND CANADA, AFL-CIO**

Petitioner

and

**LOCAL 1, INTERNATIONAL UNION OF
BRICKLAYERS AND ALLIED
CRAFTWORKERS, AFL-CIO**

Intervenor

**BROADCAST DESIGN & CONSTRUCTION
SERVICES, INC.**

Case 07-RC-064603

Employer

and

LOCAL 514, OPERATIVE PLASTERERS'

¹ The names of the Employers appear as amended at the hearing.

² These cases were consolidated for hearing on November 11, 2011 by an Order Consolidating Cases and Notice of Representation Hearing.

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

Petitioner

and

**LOCAL 1, INTERNATIONAL UNION OF
BRICKLAYERS AND ALLIED
CRAFTWORKERS, AFL-CIO**

Intervenor Local 1/
Cross-Petitioner

and

**INTERNATIONAL UNION OF
BRICKLAYERS AND ALLIED
CRAFTWORKERS, AFL-CIO**

Intervenor

DEMARIA BUILDING COMPANY, INC.

Case 07-RC-064870

Employer

and

**LOCAL 514, OPERATIVE PLASTERERS'
AND CEMENT MASONS' INTERNATIONAL
ASSOCIATION OF THE UNITED STATES
AND CANADA, AFL-CIO**

Petitioner

and

**LOCAL 1, INTERNATIONAL UNION OF
BRICKLAYERS AND ALLIED
CRAFTWORKERS, AFL-CIO**

Intervenor Local 1/
Cross-Petitioner

and

**LOCAL 9, INTERNATIONAL UNION OF
BRICKLAYERS AND ALLIED
CRAFTWORKERS, AFL-CIO,**

Intervenor Local 9

AMALIO CORPORATION, INC.

Case 07-RC-064611

and

E.L.S. CONSTRUCTION, INC.

Case 07-RC-064787

Employers

and

**LOCAL 514, OPERATIVE PLASTERERS'
AND CEMENT MASONS' INTERNATIONAL
ASSOCIATION OF THE UNITED STATES
AND CANADA, AFL-CIO**

Petitioner

and

**LOCAL 9, INTERNATIONAL UNION OF
BRICKLAYERS AND ALLIED
CRAFTWORKERS, AFL-CIO**

Intervenor

RONCELLI, INC.

Case 07-RC-066599

and

BARTON MALOW COMPANY

Case 07-RC-066611

and

**ALBANELLI CEMENT CONTRACTORS,
INC.**

Case 07-RC-066641

Employers

and

**LOCAL 514, OPERATIVE PLASTERERS'
AND CEMENT MASONS' INTERNATIONAL
ASSOCIATION OF THE UNITED STATES
AND CANADA, AFL-CIO**

Petitioner

and

**LOCAL 1, INTERNATIONAL UNION OF
BRICKLAYERS AND ALLIED
CRAFTWORKERS, AFL-CIO**

Intervenor Local 1/
Cross-Petitioner

and

**LOCAL 9, INTERNATIONAL UNION OF
BRICKLAYERS AND ALLIED
CRAFTWORKERS, AFL-CIO**

Intervenor Local 9

APPEARANCES:

Robert D. Fetter, Attorney, of Detroit, Michigan, for the Petitioner

Donald H. Scharg, Attorney, of Detroit, Michigan, for the Employers (except E.L.S. Construction)

John Canzano, Attorney, of Southfield, Michigan, for Intervenors Local 1 and BAC

John G. Adam, Attorney, of Royal Oak, Michigan, for Intervenor Local 9

**DECISION AND DIRECTION OF ELECTIONS
AND ORDER SEVERING CASES**

Upon petitions 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.

Upon the entire record in this proceeding,^{3, 4} the undersigned finds:

³ All parties, except E.L.S. Construction, Inc., timely filed briefs, which were carefully considered. E.L.S. did not file a brief.

⁴ By Order to Show Cause issued May 2, 2012, the parties were notified of the undersigned Regional Director's intent to substitute the PDF electronic Joint Exhibit 13, Michigan Statewide Heavy and Highway Agreement, which is a complete contract, including a duplicate page 18 and 19 with signature and dates, for the bound, Joint Exhibit 13 which is a partial document. No party having responded thereto, it hereby is so ordered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.⁵

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.

3. The labor organizations involved claim to represent certain employees of the Employers.

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 Act.

I. OVERVIEW

These cases involve cement mason contractors which have either provided a power of attorney for the purposes of collective bargaining to one of three associations: Associated General Contractors (AGC), Associated Concrete Contractors of Michigan (ACCM), or Construction Association of Michigan (CAM) (collectively, Associations), or have signed onto such contracts directly with either Local 514, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO (Local 514 or Petitioner) or Local 1, International Union of Bricklayers and Allied Craftworkers, AFL-CIO (Local 1). Local 1 also intervened with respect to Broadcast Design and Construction Co. (Broadcast), DeMaria Building Company, Inc. (DeMaria), Roncelli, Inc. (Roncelli), Barton Malow Company (Barton Malow), and Albanelli Cement Contractors, Inc. (Albanelli).

Local 9, International Union of Bricklayers and Allied Craftworkers, AFL-CIO (Local 9)⁶ intervened with respect to DeMaria, Amalio Corporation, Inc. (Amalio), E.L.S. Construction, Inc. (E.L.S.), Roncelli, Barton Malow, and Albanelli. International Union of Bricklayers and Allied Craftworkers, AFL-CIO (International BAC) has intervened only with respect to Broadcast.

As a preliminary matter, I find that the petitioned for Association multi-employer units are appropriate in light of the extensive bargaining history between members of the Associations and Petitioner, the similarity in the work performed by the petitioned-for Employers, the Board's continued acceptance of multi-employer units, and the need to ensure the stability of labor relations.

Intervenors and all of the Employers, with the exception of E.L.S., assert that peace agreements signed in 1996, after Local 1 and Petitioner resolved to bargain separate contracts with the Associations for the first time, continues to bar petitions in the

⁵ On the first day of hearing, the hearing officer reviewed and granted the Intervenors' motions to intervene, as indicated on the case captions herein.

⁶ Local 1 and Local 9 are also referred to herein collectively as Intervenors. In brief, they adopted and incorporated the other's arguments.

Association units, as well as the single employer unit petitions with respect to Broadcast, DeMaria, Roncelli, Barton Malow, and Albanelli. I cannot agree that the peace agreements continue, but rather by their terms, the agreements expired with the 2006-2009 collective bargaining agreements.

To the extent that Petitioner seeks residual units in Barton Malow and Roncelli, I agree that such units are appropriate. Additionally, the traveler clause in the Michigan Council of Employees (MCE) Agreement does not serve as a bar because the instant decision is issuing after the 90th day prior to the expiration of the MCE contract. See *Royal Crown Cola*, 150 NLRB 1624, 1625 (1965).

With respect to other contract bar issues, I find that there are no contract bars with respect to Broadcast because the International BAC-International Council of Employers of Bricklayers and Allied Craftworkers (ICE) agreement does not contain the requisite terms to serve as a contract bar. Concerning the Employers Angelo Iafate Construction Company and Brenca Contractors, Inc., I find that the Michigan Infrastructure and Transportation Association (MITA) contract with the International Union, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO (OPCMIA), does not constitute a bar because the OPCMIA has explicitly declined to intervene. With respect to Albanelli Cement Contractors, Inc., the Michigan Statewide Heavy and Highway Agreement (Heavy and Highway Agreement) with Intervenors Local 1 and Local 9 does not serve as a bar to holding an election in the residual unit because Petitioner severed the heavy highway work classification from the Albanelli unit, and such a residual unit is appropriate. Moreover, it does not serve as a bar because this decision is issuing during the time when the contract exceed three years. See *Maramount Corp.*, 310 NLRB 508, 512 (1993); *Royal Crown Cola*, supra.

The Employers further assert that the petitions with respect to the Associations and all entities other than Albanelli should have a unit description which reads “building and heavy construction” but that Albanelli, which has that phrase in its unit description, should simply state “cement work.” Intervenors do not share the Employers’ objection to the unit descriptions because “the same employees generally perform both types of work, the work is similar and requires similar skills, and there is an obvious community of interest as to both types of work,” but they concur with the Employers that the limitation with respect to Albanelli’s work is inappropriate. I find that the term “cement work” is appropriate for the unit descriptions for the Associations and the stand-alone Employers because the record discloses that building and heavy construction work is often performed interchangeably by the cement masons who perform road or outside work and inside, finish work. With respect to Albanelli, I concur with Petitioner that an appropriate unit description include “building and heavy construction” because Albanelli utilizes different work groups for its inside and outside work.

The Employers also assert, and Intervenors concur, that the unit descriptions should be limited to work performed in Wayne, Oakland, and Macomb counties. However, because many of the Employers work outside of these areas also, I find that such geographic limitation is not appropriate.

II. THE EMPLOYEES: CEMENT MASONS

Cement masons, also called finishers, lay cement in and around a building, including, floors, pavement, and curbs. This is “inside,” “commercial” or “heavy building and construction” work. Cement masons also perform “road” or “outside work” building highways and roads, parking lots, and bridges. The dividing line between inside and outside work is generally five feet outside a building. The processes involved in both types of work require largely the same skills, although cement masons trowel and machine finish the inside of the building, while the outside work is left with a different, less refined, texture.

Some cement masons move from contractor to contractor, and some cement masons form a core group or a steady workforce for a specific employer which hires extra employees when needed. Cement masons are sometimes dispatched by a union hall and sometimes directly hired by the employer.

III. THE ASSOCIATIONS⁷

A. The Associated General Contractors of Michigan

The Associated General Contractors (AGC) of Michigan, a statewide organization, is a chapter of the AGC Contractors of America. AGC consists of members who are construction employers and contractors. AGC and Petitioner have had a bargaining relationship for 40-50 years. Prior to 2006, AGC bargained jointly with Local 1 and Petitioner. With respect to the AGC, and as amended at the hearing, Petitioner seeks a unit of:

All employees performing cement mason work in the state of Michigan, except for Monroe County, for the following members of the Associated General Contractors of Michigan: 3L.K. Construction, LLC; Fessler & Bowman, Inc. (for the counties of Macomb, Oakland, Wayne, Hillsdale and Lenawee only); Alberici Constructors; George McIntosh, Inc.; Angelo Iafrate Construction Company; George W. Auch Company; Aristeo Construction Company; Granger Construction Company; Brix Corporation; Commercial Contracting Corporation; Siwek Construction Company, Devon Industrial Group; DIG/CCC; W-3 Construction Company; and, E&L Construction Group, Inc; but excluding guards, supervisors as defined by the Act, and all other employees.

The individual Employers named in the AGC petition have all signed power of attorney forms with the AGC in order to be represented by AGC for negotiations with the Petitioner. Most of the AGC power of attorney forms were signed in 2009. The form allows the contractor to designate which unions it authorizes AGC the right to bargain with on its behalf. The AGC contractors listed in the petition are based in various cities in Michigan: Detroit, Livonia, Warren, Auburn Hills, Flint, Flushing, Ferndale, Pontiac, Lansing, and Livonia. Through

⁷ The parties stipulated that a bargaining unit consisting of a multi-employer unit of all three Associations is inappropriate.

voluntary recognition, AGC has Section 9(a) relationships with other cement mason OPCMIA unions in Toledo, Ohio, and Pittsburgh, Pennsylvania. The territorial jurisdiction of Local 886, OPCMIA, located in Toledo, Ohio, extends into Monroe County, Michigan.

The most recent 2009-2011 AGC-Petitioner collective bargaining agreement, which has been extended until May 31, 2012, provides that the geographic territory covered by the agreement consists of Wayne, Oakland, and Macomb counties (also commonly referred to as the tri-counties or tri-county area). There are two addenda available to Employers showing that the geographic jurisdiction of Petitioner encompasses Washtenaw County and the portion of Livingston County south of M-59. A separate addendum provides that Petitioner's jurisdiction encompasses St. Clair and Sanilac counties in Michigan.

1. *Fessler & Bowman, Inc. (Fessler)*⁸

AGC contractor Fessler employs about 20 cement masons as part of a core group. Fessler is based just west of Flint, Michigan. Even though the cement masons' skills are interchangeable, Fessler uses different cement masons for its outside work and its inside work. In order to secure additional help, Fessler contacts former employees or calls the local union business agents to send out cement masons. Which business agents are called depends on where work is performed.

Fessler has provided power of attorney for AGC to bargain on its behalf with Petitioner for the past 20 years. Fessler pays Petitioner's rates in Wayne, Oakland, and Macomb counties. It also utilizes cement masons in Washtenaw County.

In 2004, the Board conducted a representation election among Fessler's cement masons in which Local 16, OPCMIA was chosen to represent Fessler employees working in Local 16's jurisdiction. The AGC-Local 16 contract covers Lansing, Jackson, Flint, Grand Rapids, Muskegon, Battle Creek and Kalamazoo. Fessler also utilizes Local 16 cement masons in Huron county, St. Clair county, and Livingston county, north of M-59. About 25 percent of Fessler's work is with Petitioner. Petitioner seeks a unit in the counties of Macomb, Oakland, Wayne, Hillsdale, and Lenawee only, due to the AGC-Local 16 contract.

2. *Granger Construction (Granger)*

Granger has provided power of attorney to AGC to negotiate contracts with both the Petitioner and OPCMIA Local 16 and performs building and heavy construction work across the state of Michigan, including, but not limited to Wayne, Macomb, Oakland and Washtenaw counties. The AGC does not have authority to bargain on Granger's behalf with either Intervenor Local 1 or Local 9.

Granger uses both steady employees and employees hired from the hall in the jurisdiction where work is performed. Employees covered by the AGC - Local 16 contract sometimes work in Wayne, Oakland and Macomb counties, and when they do Granger applies

⁸ Some, but not all, of the individual contractors listed in the Association petitions had representatives who testified at the hearing.

the terms of Petitioner's contract to them. When employees represented by Petitioner work outside the tri-county area, they are paid the lower Local 16 rates.

3. *Angelo Iafrate Construction (Angelo Iafrate)*

Angelo Iafrate consistently employs the same employees. When its employees perform inside work, they do so under the AGC agreement with Petitioner; if performing outside work, such as highway work, bridges, exit and entry ramps from the expressway, employees work under the collective bargaining agreement of Michigan Infrastructure and Transportation Association (MITA), formerly called the Michigan Road Builders Association, and the OPCMIA. Angelo Iafrate performs 90 percent of its work in the Macomb, Oakland, and Wayne counties; the other 10 percent of its work stretches out to Livingston, Genesee and Monroe counties.

4. *George Auch Company (George Auch)*

George Auch is another Employer which signed a power of attorney with the AGC to negotiate on its behalf with Petitioner, and thus is bound by Petitioner's Agreements with the AGC. George Auch performs work at healthcare, educational, and municipal facilities. It subcontracts the cement mason work to contractors who have signed with Local 1 or Petitioner. George Auch does not directly employ cement masons.

B. *Associated Concrete Contractors of Michigan*

The Associated Concrete Contractors of Michigan (ACCM) also represents its employer-members in collective bargaining. ACCM has bargained with Petitioner for 40 to 50 years. Prior to 2006, Petitioner and Local 1 bargained jointly with the ACCM. As amended at the hearing, Petitioner seeks an election in the following Unit:

All employees performing cement mason work in the state of Michigan, except for Monroe County, for the following members of Associated Concrete Contractors of Michigan: Creative Cement Company; North Channel Construction Co, Inc.; V&O Cement Co.; Hartwell Cement Co.; and Ferrini Cement Company; excluding guards, supervisors as defined by the Act, and all other employees.

The five Employers listed in the ACCM petition have granted power of attorney to ACCM to bargain with Petitioner. The power of attorney documents date from March 13, 1990, through February 11, 2005. The older power of attorney documents contain no geographic limitation and the others provide that the ACCM had the authority to bargain "in the state of Michigan." The Employers have Michigan locations in Taylor, Harsens Island, Clinton Township, Oak Park, and Detroit. There are four other employers which have signed authorizations for the ACCM to bargain on their behalf with Local 1, and they are not part of the petitioned for multi-employer unit. Intervenors object to what they call "mini-units" sought by Petitioner, which they assert carve out those contractors who have chosen to negotiate with Local 1. However, the contractor-employers in the petitioned-for units have chosen to negotiate with Petitioner, and most, if not all, have an extensive history in doing so, notwithstanding the 2006 split between Petitioner and Local 1.

The 2009-2011 ACCM-Petitioner table settlement⁹ provides for a geographic territory consisting of Wayne, Oakland, and Macomb counties with addenda covering Monroe, St. Clair, Sanilac, Livingston, and Washtenaw counties. ACCM members perform work in Wayne, Oakland and Macomb counties, as well as outside this area in the state of Michigan. If work is to be performed outside of the tri-counties, ACCM members must sign an out-state contract. An employer joins ACCM by filling out an application and then providing power of attorney. Some who sign the power of attorney participate in the negotiations, and some do not.

Ferrini Cement Co. (Ferrini)

On October 15, 2004, Ferrini signed a power of attorney form to authorize the ACCM to bargain on its behalf with Petitioner or Local 1. Ferrini performs building and heavy construction work, but no roadwork other than road repairs. Ferrini employs a set crew of four cement masons. When more employees are needed, the Employer calls former employees or a business agent to secure employees through a union local. Ferrini sporadically works outside of Macomb, Oakland, and Wayne counties.

C. Construction Association of Michigan

The Construction Association of Michigan (CAM) is comprised of thousands of members who have either given power of attorney to CAM to negotiate on their behalf or who have signed an independent agreement with the specific union incorporating CAM's negotiated agreement. Petitioner first negotiated a collective bargaining agreement with CAM in 2003. However, Petitioner negotiated with CAM's predecessors prior to this. CAM's earliest predecessor was founded in 1885. Petitioner seeks the following Unit, as amended at hearing:

All employees performing cement mason work in the state of Michigan, except for Monroe County for the following members of Construction Association of Michigan: Alford Construction Group; JJ Barney Construction; Brencal Contractors, Inc., CamBridge Associates, LLC; Christman Concrete Industrial Floors, LLC; Dan's Cement, Inc.; Delaney Construction, Inc.; Detroit Water Constructors; Elcon Construction; Fort Wayne Contracting, Inc.; HB Contracting Service, Inc.; Kerson Construction, Inc., Lansing Poured Wall; RL Shekell, Inc.; TDS Contractors, Inc.; and, Walsh Construction Company; excluding guards, supervisors as defined by the Act, and all other employees.

The Employers identified in the CAM petition have agreed to have CAM bargain with Petitioner on their behalf.¹⁰ The 2009-2011 CAM-Petitioner collective bargaining agreement

⁹ The parties utilize the term "table settlement" for the final agreement reached at the bargaining table during contract negotiations. This terminology is utilized where appropriate herein.

¹⁰ There was some testimony that Detroit Water Constructors, Elcon Construction, H.B. Contracting Service, and Lansing Poured Wall may be currently out of business, although the entities may have reorganized under another name. There is no evidence that the Employers have withdrawn their power of attorney from CAM. Thus, I find that the inclusion of these entities is appropriate. See *Sewanee Coal Operators' Association, Inc.*, 152 NLRB 663, 669 (1965) (The Board affirmed the Trial Examiner's findings that a multi-employer unit was still appropriate

provides that the geographic territory of the agreement consists of Wayne, Oakland, and Macomb counties, with addenda for Washtenaw county, Southern Livingston county, St. Clair, and Sanilac counties. The power of attorney form signed by CAM contractors does not contain any geographic limitation.

1. *Walsh Construction Company (Walsh)*

Walsh is headquartered in Chicago, has a Detroit office, and performs work in most states throughout the country including Ohio, Kentucky, and Pennsylvania. Its Detroit office generally handles the work throughout all of Michigan, although the Chicago office may supervise work on the west side of the state on a project-by-project basis.

Walsh's cement mason work includes building hospitals, prisons, and high rises as well as heavy civil work which includes building roads, bridges, and treatment plants. Walsh performs both types of work in the state of Michigan. Walsh's senior project manager, Bill Gilliam, testified that there is nothing in the contract to preclude Walsh from performing work throughout the state of Michigan, even outside of Wayne, Oakland, and Macomb counties.

Walsh subcontracts cement masonry work. As far as Gilliam knows, if Walsh subcontracts in Michigan, the CAM contract does not apply to the subcontractor. Despite this testimony, the 2006-2009 CAM agreement prohibits its contractors from subcontracting to employers who do not have a signed contract with either Petitioner or Local 1. Walsh does not apply the CAM contract to work performed in Ohio or Pennsylvania, but cement masons employed by Walsh work under the collective bargaining agreements that are in effect in those states.

2. *Brenca Contractors, Inc. (Brenca)*

Brenca is another employer which has assigned power of attorney to negotiate collective bargaining agreements with CAM or its predecessors for at least 15 years. Brenca has been in existence since 1960. Brenca operates as a general contractor and performs concrete and excavation work, mostly in Michigan, although it performed one project in Kentucky, under the auspices of a CAM agreement there.

Brenca dispatches a foreman to jobsites and secures other employees as needed either by using former employees or by calling a union hall for referrals. The foremen constitute a core group, and some have worked for Brenca for as long as 20 years. Ninety-five percent of Brenca's work is located in the metro Detroit area. When performing work within Wayne, Oakland and Macomb counties, the foremen secure employees from those areas. When performing work in Michigan outside this tri-county area, Brenca still has its cement masons work under the CAM-Petitioner agreement.

Brenca performs both inside and outside cement mason work on flat surfaces such as floors, pavement, curbs, and parking lots. The outside work may fall under the MITA contract. Brenca did not sign onto the MITA agreement until July 2010. Brenca is not a

despite the cessation of some of the employers' business, and testimony that they would not be able to resume their operations.)

member of MITA but independently adopted the MITA-OPCMIA contract. When working in manufacturing plants such as General Motors in Pontiac, Milford, or Hamtramck municipalities, Brenca is bound by the National Maintenance Agreement (NMA), a tripartite agreement between the property owner, the contractors, and OPCMIA. No party asserts that the NMA contract is a bar.

D. Associations' Recent Bargaining History

All parties stipulate that until May 2006, each Association bargained jointly with Petitioner and Local 1. Joint contracts between Local 1 and Petitioner and each Association, including CAM's predecessors, date as far back as the early 1960's.

After 2006 the Associations, and the Unions [Petitioner and Local 1] agreed that the Association contractors would choose to negotiate with either Petitioner or Local 1. Three separate "peace agreements" to this effect were negotiated and signed by the Unions and each of the three Associations in March 2006, on behalf of "Designated Contractors," i.e., those Local 514 contractors listed in the Association Petitions herein as well as Local 1 contractors who had the Associations bargain for them. The peace agreements were signed before the 2003 collective bargaining agreement expired and governed the negotiations for the new 2006 agreement. With a few exceptions, most of the Employer affiliates with AGC and ACCM agreed to enter into a successor agreement with the Petitioner, and those falling under the CAM agreement split evenly between Petitioner and Local 1.

Each of the three peace agreements provided that:

OPCMIA Local 514, BAC Local 1, and the [specific association] agree that upon the execution of this agreement and for as long as (1) the [specific association] retains the power of attorney for the Designated Contractors; and (2) the [specific association] bargains in good faith towards a contract ("Successor Contract") to succeed the joint [specific association] Local 514/BAC Local 1 collective bargaining agreement, then the parties hereto will not file any petition with respect to said Designated Contractors with the National Labor Relations Board for the duration of the successor agreements.

The Associations and the Unions agreed to "negotiate parallel, but separate" collective bargaining agreements with the Unions. The Unions agreed to bargain jointly with the goal of producing separate agreements.

The three Associations successfully bargained successor agreements with both of the Unions with effective dates from 2006 to 2009. These agreements incorporated some provisions of the peace agreement with respect to subcontracting and non-discrimination, allowing employees to travel between the Unions, the Employers, and the Associations without detriment to their interests in vacation, pension or other benefit contributions, but the rest of the peace agreement language was not incorporated in the 2006-2009 collective bargaining agreement.

When the Associations commenced collective bargaining negotiations for the 2009-2011 contracts, there was no oral agreement as to whether the peace agreement would continue beyond the 2006 – 2009 contracts.¹¹ The executed AGC and CAM contracts were effective from June 1, 2009, until May 31, 2011. The ACCM executed table settlement was effective for the same time period, although the corresponding contract was never typed up.

The 2009-2011 collective bargaining agreements for AGC and CAM contained addenda, and the table settlement for ACCM referenced the addenda, expanding Petitioner's jurisdiction to work performed by the Employers in Washtenaw County, Southern Livingston County, and St. Clair and Sanilac counties. The addenda to the contracts and the table settlement language covering St. Clair and Sanilac counties provides for different wage rates than the main contract. The addenda, including table settlement language, also provided that the geographical territory for Local 1 should expand to include Monroe and St. Clair counties. The individual contractors could choose whether to sign the addenda. Some contractors chose to not sign agreements for areas where they did not perform work.

In the months of May and June, 2011, about a dozen negotiation sessions were held between the Associations, Petitioner, and Local 1, and contract proposals were exchanged between the parties. The Associations' insistence on a new proposal that overtime would not be paid daily until after ten hours met with particular resistance from Petitioner. Nevertheless, after joint negotiations for the two separate agreements, Petitioner, Local 1, and the three Associations reached a tentative agreement or table settlement which was signed on July 6, 2011. The table settlement contained the new overtime restrictions. Petitioner's constitution and bylaws required contract ratification by the members. Local 1 did not have a similar ratification requirement. No one negotiating on behalf of Petitioner, including the various agents of Petitioner including Joel Santos, Henry Williams, Benny Lonny and the OPCMIA vice president, Dan Rauch, indicated to other parties whether they would recommend the settlement to the membership.

On July 19, Petitioner held a specially-called ratification membership meeting. At the meeting, members voted against the tentative agreement 39 to 1. Petitioner's business manager, Joel Santos, called Local 1 officials to inform them that the membership did not ratify the agreement.

On August 3, there was a meeting between Santos, representatives from the three Associations, Local 1's business agent, Mark King, and several local Petitioner representatives including Dan Rauch, Henry Williams and Benny Lonny, in addition to a mediator. Petitioner's representatives informed the Associations that the membership had rejected the tentative agreement. King said Local 1 would still accept the table settlement.

Rauch notified the others that the peace agreement was in place and that there was still an obligation to reach "parallel and equal but separate agreements." Rauch asked why the others were planning to sign a contract without Petitioner. Rauch said that he thought they were trying to keep the same wage package and fringes together, and Wayne Albanelli agreed. King said the

¹¹ Wayne Albanelli, who participated in the negotiation of the table settlement as a member of the ACCM's board of directors testified that it was "his position" that Petitioner and Local 1 agreed to extend the peace agreement but he also testified that "no particular person" from Petitioner said this.

peace agreement language was not worth the paper it was written on. Local 1 signed the table settlement with the Associations on August 3, 2011.

On August 8, 2011, Santos sent an identical letter to the three Associations about the peace agreement. The letter notes that the peace agreement provided that the Associations would negotiate “parallel, but separate collective bargaining agreements with ... [Local 514] ... and Local 1 ...” and that paragraph eight of the peace agreement “provided that the resulting agreements ‘shall include equivalent terms and conditions of employment, the same total economic packages, identical scope of work and geographic scope covering Wayne, Macomb and Oakland Counties.’” The letter recounted that it had come to Petitioner’s “attention that the Association has entered into a successor agreement with Local 1 to succeed the Local 1 agreement that also expired by its terms on May 31, 2011.” Finally, Santos wrote that “[t]he purpose of this letter is to put you on notice that the Association’s entry into a successor agreement with Local 1 constitutes a breach of the ... [peace agreement] ... and, in particular, with the Equivalency Clause. Local 514 reserves all rights and remedies arising from said breach.”

The Associations continued to negotiate with Petitioner after their settlement with Local 1. At a bargaining session on August 31, Petitioner proposed extending the 2009-2011 agreement. The Associations refused. As of September 1, Petitioner did not have a contractual relationship with any of the Associations.

The petitions were filed on September 15. On the same date, the Associations and Petitioner agreed to extend their 2009-2011 agreement at a meeting in which Local 1 was not present.¹² The next bargaining session between Petitioner and the Associations occurred on September 27. At that meeting, the 2009-2011 agreement was extended until May 31, 2012. Petitioner’s members subsequently ratified the September 27th extension agreement at a membership meeting.

E. Peace Agreement: Analysis

The Associations and Intervenors assert that the peace agreements signed in 2006 precluded Petitioner from filing the Association petitions in 2011. The seminal case with respect to such agreements is *Briggs Indiana*, 63 NLRB 1270 (1945). In that case, the petitioning union agreed to a provision in its collective bargaining agreement that certain classifications would be excluded. The union then sought to represent one of the classifications. The Board noted that the agreed upon exclusion of the classification was only for the “brief span of 12 months” which it termed “a reasonably short period.” *Id.* at 1272. Thus, the Board found the question was whether it was “the proper function of the NLRB to expend its energies and public funds to confirm a result which the Union agreed it would refrain, temporarily, from seeking to achieve.” *Id.* at 1273. The Board’s emphasis on a reasonable period of time for such an agreement can be found in later cases as well. See *Lexington House*, 328 NLRB 894, 897 (1999), the Board explicitly noted that there should be no peace agreement past the term of a successor agreement.

¹² It is not clear from the record which event, the filing of the petitions or the agreement to extend the 2009 collective bargaining agreement, occurred first.

Besides imposing temporal limitations on peace and similar agreements, the Board has carefully scrutinized the language of such agreements to ensure that a union has explicitly waived its right to file petitions with the Board. In *Cessna Aircraft Co.*, 123 NLRB 855 (1959), the Board held that such a commitment by a union would be enforced only “where the contract itself contains an *express* promise on the part of the union to refrain from seeking representation of the employees in question or to refrain from accepting them into membership.” *Id.* at 856-857. (emphasis in original) In a more recent case, *Springfield Terrace*, 355 NLRB 937 (2010), the Board found that contractual language defining a unit as specifically excluding LPNs did not “satisfy the strict standard for finding a waiver of the Union’s right to file” a petition for the LPNs to constitute a separate bargaining unit. Because the employer did not supply any contract language or other express agreements to support its claim that there had been a union waiver of any effort to organize the LPNs, the Board determined that waiver should not be found. *Id.* at 938. See also *U Mass Memorial*, 349 NLRB 369, 370 (2007)(no waiver because there was no provision in which the petitioner explicitly agreed not to seek to represent employees).

In the instant matter, it cannot be said that Petitioner waived its right to file petitions indefinitely. As *Briggs Indiana* and *Lexington House*, *supra*, demonstrate, the Board tolerates such an infringement on rights under the Act for only a short time, and not with respect to successor agreements. The peace agreements in this case were signed in March 2006 in conjunction with the negotiations for the 2006-2009 collective bargaining agreements.

Moreover, the assertion that the peace agreement should outlive the 2006-2009 collective bargaining agreements is not compatible with the plain language of the peace agreements which provide “[t]he Parties agree that the following conditions shall govern negotiations of successor agreement to the current collective bargaining agreements between the parties.” This language cannot be read to imply that the agreements should exist beyond the 2006-2009 contracts. In their brief, the Employers quote paragraph 3 of the agreements which contains the term “successor agreements.” The Employers take this term out of context in that this language references the respective contracts between the Associations and Petitioner and the Associations and Local 1. This is readily apparent in paragraphs 1 and 7 as well. Other references in the agreements are presented in the singular, “Successor Contract” at paragraphs 3, 4, and 6. Thus, the strict waiver standard required by the Board in such cases as *U Mass Memorial*, 349 NLRB 369 (2007) has not been met. Petitioner cannot be found to have indefinitely forfeited its rights under the NLRA to file representational petitions by the language in the agreements.

Moreover, even if the agreements had been in place on August 3, at the point when Local 1 accepted a contract that Petitioner rejected, the agreement would have been breached as Local 1 and Petitioner had ceased to bargain equivalent agreements. Thus, I find that the 2006-2009 peace agreement between the Associations, Petitioner, and Intervenors do not act as a bar to the petitions.

F. The Appropriateness of the Multi-Employer Units

In *Maramount Corp.*, 310 NLRB 508, (1993), the Board reaffirmed its longstanding policy that a multi-employer bargaining unit continued to be appropriate in certain circumstances.

In *Shipowners' Assn. of the Pacific Coast*, 7 NLRB 1002 (1938), review denied sub nom. *AFL v. NLRB*, 103 NLRB F.2d 93 (D.C. Cir. 1939, affd. 308 U.S. 401 (1940)), the Board, with Supreme Court approval, recognized the appropriateness of a multi-employer bargaining unit. Determining whether a unit is appropriate for bargaining requires the Board to balance the competing interests of 'insuring to employees their rights to self-organization and freedom of choice in collective bargaining and of fostering industrial peace and stability through collective bargaining.' *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

Intervenors and the Employers assert that a multi-employer unit is not appropriate in these cases under *John Deklewa & Sons*, 282 NLRB 1375 (1987). In *Deklewa*, the Board found that an "appropriate unit normally will be the single employer's employees covered by the agreement." Id at 1377, 1385 (emphasis added)¹³ However, the Board was careful to point out that "[w]e do not imply that multi-employer associations and multi-employer bargaining are no longer appropriate in the construction industry.... Specific representation case matters are beyond the scope of this opinion." Id. at 1305 fn 42. Thus, contrary to the contention of the Employers and Intervenors, the Board did not rule out multi-employer units, nor did the Board dictate that a community of interest test was dispositive of whether a multi-employer unit was appropriate. Rather, in *Deklewa*, the Board abandoned its previous merger doctrine whereby unions could convert a Sec. 8(f) contract to a Sec. 9(a) contract when a majority of employees joined the unions. The Board also determined that Section 8(f) agreements would continue to not bar petitions for elections, although members of a multi-employer association would no longer be free to repudiate Section 8(f) agreements during their term.

Intervenors and the Employers cite *Comtel Systems Technology*, 305 NLRB 287 (1991), for the proposition that a multi-employer unit did not bar a petition among the employees of a single employer within that unit; and thus, it would be inappropriate to proceed to elections in the multi-employer units sought by Petitioner. However, I find that *Comtel* is limited to its facts and does not have the broader meaning ascribed to it by the Employers and Intervenors. Pursuant to *Comtel*, when an employer initially joins a multi-employer bargaining association in which a labor organization has been recognized as the Section 9(a) bargaining representative of the employees in the multi-employer bargaining unit, a Section 8(f) bargaining relationship exists between the new employer and the labor organization until such time as the labor organization establishes its majority status among the new employer's bargaining unit employees.

Since its holding in *Comtel*, the Board has refused to process a petition in single employer units when the employers at issue were part of a multi-employer association that had entered into a Section 9(a) agreement. *Casale Industries, Inc.*, 311 NLRB 951, 953 (1993). In *Casale*, a petitioner sought to represent employees in two single employer bargaining units, for two employers who were members of a multi-employer bargaining unit. Years earlier, balloting

¹³ The Employers also rely on *Mason Contractors Association of St. Louis*, Case 14-RC-12596 (April 21, 2006), and *J&K Mechanical, Inc.*, 07-RM-069501 (January 9, 2012). *Masons Contractors Association of St. Louis* was not reviewed by the Board and thus has no precedential value. Since the Employers filed their brief in the instant matters, the Board denied review in *J & K Mechanical* in an unpublished decision dated February 3, 2012. Unlike in the instant petitions, the central issue in *J & K Mechanical* was whether the parties had a 9(a) relationship and whether a multi-employer unit was appropriate when there was a petition for a single employer unit.

had been conducted among 26 employers in a multi-employer unit. The results of that election were tabulated association-wide, ballots were not segregated by employer, and there was no indication of the tally among each member-employer's employees. Despite such procedural issues, including that employees were not presented with a "no-union" choice, the Board granted deference to the Sec. 9(a) relationship which had been in place for six years prior to the petitions for employees of only two of the employers. The Board found because the appropriate unit for an election was the recognized multi-employer bargaining unit, the petitions seeking single-employer units could not be processed. The assertion that employees' rights will be trammelled by going to election is not the case. New employers will remain governed by Sec. 8(f) until majority status is established.

The Employers and Intervenors also rely on the lack of community of interest factors such as geography, common supervision, and transfers of employees among the employers of the Association, to make its case that a multi-employer unit is not appropriate. While there is evidence that the cement masons perform the same type of work under similar conditions and in some instances transfer or flow between the Employers, the community of interest test is not the appropriate test. In *Donaldson Traditional Interiors*, 345 NLRB 1298 (2005), the Board reiterated the current test for determining whether a multi-employer unit is appropriate:

The test to be applied in assessing the status of the Association as multi-employer unit is well established: it is whether the members of the group have indicated from the outset an unequivocal intention to be bound in collective bargaining by group rather than individual action

An unequivocal intent to be bound by joint bargaining has been found when, for example, an employer agrees to adopt a contract resulting from joint bargaining. *Architectural Contractors Trade Assn.*, 343 NLRB 259 (2004); *Arbor Construction Personnel, Inc.*, 343 NLRB 257 (2004). *Sands Point Nursing Home*, 319 NLRB 390 (1995) ("a party urging a multi-employer unit must demonstrate a controlling history of bargaining on a multi-employer basis and an unequivocal intent by the employer to participate and be bound by the results of group bargaining."); *Centra*, 328 NLRB 407, 408 (1999).

Here, the Employers named in the Association petitions have demonstrated an intent to participate and be bound by group or joint bargaining. The power of attorney form signed by the Employers with the AGC state alternatively, "I certify that the Michigan Chapter of the Associated General Contractors/Labor Relations Division has been designated as the Employer's sole and exclusive bargaining representative" or the "undersigned Employer hereby delegates sole and exclusive authority to the [AGC] and "[t]he undersigned Firm hereby authorizes and appoints ... [AGC] ... to negotiate and sign collective bargaining agreements." The power of attorney form for CAM states that the Employers "authorize" CAM to serve as its labor relations representative, and the power of attorney forms for ACCM state that the contractors "appoint the ACCM to represent it in negotiations for labor contracts with organizations representing cement masons or invest the ACCM with the power to negotiate on its behalf."

Moreover multi-employer bargaining with Local 1 and Petitioner has proceeded for a "significant period of time." *Id.* at 408. In *Centra*, the Board found that 12 years of multi-employer bargaining was dispositive. *Id.* Here, the multi-employer relationships between Petitioner and the Associations have proceeded, in some cases, for decades. ACCM and AGC,

for example, have bargained with Petitioner for 40-50 years. The fact that Local 1 and Petitioner parted ways in 2006 cannot negate the earlier bargaining history between Petitioner and the Associations.

The finding in *Maramount Corp.* that single employer units were appropriate was premised on the filing of numerous individual petitions for such units, which the Board took as evidence that employees were seeking to exercise their right to self organization and freedom of choice and, “most significantly,” that the employers operated in different industries and the contracts failed to include any particular industry-specific concerns. *Maramount Corp.*, 310 at 511. This is not the case in the instant matters. All of the Employers in the Associations engage in cement masonry, whether directly or through subcontracting, and the past contracts between Petitioner and the Associations concern only terms and conditions of employment of cement mason employees, not other industries or crafts. Moreover, no individual Employer petitions have been filed for the Association employers; thus the employees’ rights to self organization and freedom of choice will not be compromised in proceeding to an election in a multi-employer unit, whereas the stability of labor relations between Petitioner and the Associations would be compromised if the instant petitions could not go forward in light of Petitioner’s long standing bargaining relationships with the Associations.

IV. SINGLE EMPLOYERS

Petitioner seeks to represent employees in single-employer units for those Employers which have provided one of the Associations power of attorney to negotiate on their behalf with Local 1, not Petitioner. Such petitions were filed for Broadcast, DeMaria, and Roncelli, which is an independent signatory to the CAM-Local 1 agreement, Albanelli for its building and heavy construction masons only, and Barton Malow. Single Employer petitions were also filed for Amalio and A.L.S, each of which is an independent signatory with Petitioner to the CAM agreement.

A. Broadcast Design and Construction Services, Inc. (Broadcast)¹⁴

Broadcast performs concrete flatwork, excavation work for mechanical electrical contractors, and foundation work. Broadcast does not perform roadwork. The parties stipulated that Broadcast is a construction industry Employer. Broadcast’s headquarters is located in Mount Clemens.

Petitioner seeks a unit of:

all employees performing cement mason work for the Employer excluding guards, supervisors as defined in the Act, and all other employees.

Broadcast primarily performs its work in Wayne, Oakland and Macomb counties, employing cement masons and finishers with a stable crew of four to six masons. Broadcast also performs work in Michigan outside of these counties. Broadcast hires additional employees

¹⁴ This is the only case in which BAC International intervened.

from job to job as needed. Broadcast secures these employees from those who worked with it in the past or by contacting Local 1's hall.

Broadcast has been a member of CAM since about 1984. When Broadcast provided power of attorney to CAM to bargain with respect to the cement masons, it chose to bargain with Local 1, not Petitioner. After Local 1 and the Petitioner ceased bargaining jointly with the Associations in 2006, Broadcast continued to hire Petitioner's members as provided for in the nondiscrimination clause of the parties' collective bargaining agreement.

In 2006, John McIntyre, the assistant to the BAC International's secretary-treasurer, contacted Broadcast about signing the ICE agreement because Broadcast was planning to perform work outside the state of Michigan. The International BAC, "in consultation with the Association of Union Masonry Contractors" developed this agreement which appears to be a model contract. According to the testimony, the purpose for the ICE agreement was to provide a way for contractors performing work in more than one BAC jurisdiction to do so without having to become bound to the collective bargaining agreement in each BAC local or district council where the work was performed.

After he sent Broadcast the ICE agreement, McIntyre told Broadcast's vice president, Jim Brennan, that the Union represented a majority of Broadcast's employees and had the cards to support majority status. Brennan did not ask to see the cards. Broadcast signed the first ICE contract on February 14, 2006.

Broadcast entered into the ICE agreement in order to perform work in Maryland. The Maryland work was not performed under the auspice of a CAM contract. Broadcast then signed another ICE contract on January 2, 2007.¹⁵ There were some changes after the 2006 agreement to allow for centralized electronic fringe benefit reporting directly to the BAC International. The 2007 ICE contract was set to expire on January 1, 2010. Broadcast has not worked out of the state of Michigan since the Maryland project.

The ICE agreements contain the following language:

Inasmuch as (1) the Union has requested recognition as the majority, Section 9(a) representative of the Employees in the classifications of work falling within the jurisdiction of the Union, as defined in Article II of this Agreement, and (2) has submitted or offered to show proof of its majority support by those Employees, and (3) the Employer is satisfied that the Union, pursuant to section 9(a) of the National Labor Relations Act, is the exclusive collective bargaining agent for all employees within that bargaining unit, on all present and future jobsites within the jurisdiction of the Union.

The ICE contract itself does not contain wage or many employee fringe benefit requirements but mandates that such terms would be developed in individual job agreements.

¹⁵ Brennan did not seem to recall whether or not he was presented with any document showing majority status, an offer to do so, or whether there was a request for recognition from any BAC Local or International representative for recognition before or after January 2, 2007.

The contract states that it will remain in effect for three years and automatically continue yearly unless notice of modification or termination is given by certified mail. There is no evidence that such notice has been provided.

When Broadcast works outside of Local 1's jurisdiction in Intervenor Local 9's jurisdiction, the ICE agreement facilitates this procedure and Broadcast pays the Local 9 rate.

B. DeMaria Building Company, Inc. (DeMaria)

DeMaria operates out of a facility located in Novi, Michigan. The parties stipulated that DeMaria is a construction industry Employer and that there is no contract bar. DeMaria acts as a general contractor for building commercial, industrial, healthcare and university facilities. DeMaria has only one permanent cement mason foreman on its payroll but utilizes additional finishers when required. These finishers come from Local 1, when DeMaria works in the Local 1 jurisdiction. On the whole, at the time of the hearing DeMaria had between 110-120 employees performing work in Wayne, Oakland, and Macomb counties.

With respect to DeMaria, Petitioner seeks a unit of:

all employees performing cement mason work for the Employer;
excluding guards, supervisors as defined in the Act, and all other
employees.

DeMaria has been a member of CAM since 2005. Without resigning from CAM, DeMaria assigned the power of attorney for labor negotiations to AGC in 2011 because it believed that AGC was preferable since the Employer was starting to perform more work out of state.¹⁶ DeMaria contacts AGC when performing work outside Michigan and has AGC assist with negotiations with trade unions in those locales. Within Wayne, Oakland and Macomb counties, DeMaria bargains with Local 1, not with Petitioner.

C. Amalio Corporation, Inc. (Amalio)

Amalio is a Michigan corporation which has been in business since 1964 and is engaged in concrete foundation and flatwork contracting services, including parking deck and building construction, but not roadwork, out of Sterling Heights, Michigan. All parties stipulate that Amalio is a construction industry employer and that no contract bar applies to the petitioned-for unit. Employers and Intervenors agree that the peace agreement does not apply to Amalio. Amalio performs its cement mason work in Michigan, including in Washtenaw County, occasionally in Lansing, and has performed work in Port Huron. Infrequently, Amalio has as many as four or five jobs at a time. Amalio pours concrete over a smaller area than some of its flatwork competitors.

Amalio has a key group of four to five cement masons which it deploys to various jobsites regardless of the location. The core group is also known as the supervisory group.¹⁷

¹⁶ It is DeMaria's position that it revoked the power of attorney with CAM when it signed the power of attorney for AGC, although there is no documentation showing such revocation.

¹⁷ No party has challenged the petition on the basis of supervisory issues under Section 2(11) of the Act.

Some of these employees have worked for Amalio for as long as 25 years. Amalio uses them to perform work in the tri-county area and when there is work outside that area in Michigan. There are also twelve to fifteen other employees Amalio contacts when there is additional work. Amalio secures employees through Petitioner and the foremen also call individuals they know to supplement the workforce.

For Amalio, Petitioner seeks a unit of:

all employees performing cement mason work for the Employer:
excluding guards, supervisors as defined in the Act, and all other
employees.

Amalio is party to at least four collective bargaining agreements in Michigan that touch on cement mason work. Amalio is an independent signatory to the collective bargaining agreement between CAM and Petitioner in Wayne, Oakland, and Macomb counties, as well as the addenda to the contract covering Washtenaw County, Southern Livingston County, St. Clair and Sanilac counties.

When jobs are performed in Ann Arbor, Amalio's masons work under the CAM-Petitioner agreement. According to Amalio's vice president, Eric Steck, Amalio is also an independent signatory to a Washtenaw Contractors Association (WCA) agreement with Intervenor Local 9.¹⁸ In addition, Amalio is signatory to an AGC-Local 9 contract for all construction work within the jurisdiction of the BAC International for all forms of masonry construction. Although its signature on the contract does not reflect the date signed, this document was likely signed 14 or 15 years ago, before Ann Arbor BAC Local 14 was subsumed into Local 9. The AGC-Local 9 contract contains rollover provisions. When questioned as to whether Amalio was bound by the WCA or the AGC contract with Local 9 in the Ann Arbor area, Steck stated that he doesn't know the difference. When performing new work in Washtenaw County, Steck states that he would apply the contract between AGC and Local 9.

When performing work in Lansing, Amalio employs cement masons under the Local 16 OPCMIA contract, except it modifies the wages of its core group of employees so as to not penalize them for working in Lansing, because Detroit area wages are typically higher.

D. E.L.S. Construction, Inc. (E.L.S.)¹⁹

E.L.S. Construction performs commercial and residential concrete construction work with an office in Lake Orion, Michigan. Most of its work is performed in Wayne, Oakland, and Macomb counties, but E.L.S. also performs work outside the tri-county area.

¹⁸ No party claims that the WCA constitutes a bar to the election.

¹⁹ E.L.S. was not represented at the hearing, although its assistant estimator, Donald Yee, testified and a commerce questionnaire was completed and received in evidence.

Pursuant to its amendment at the hearing regarding E.L.S., Petitioner seeks a Unit of:

all employees performing cement mason work for the Employer in the state of Michigan, except for the county of Monroe and excluding guards, supervisors as defined in the Act, and all other employees.

Petitioner states that it excludes Monroe County from the petition because of E.L.S.'s 9(a) relationship with an OPCMIA Local in Toledo which covers the county of Monroe.

E.L.S. became an independent signatory to the 2006-2009 CAM-Petitioner contract in 2007. The signature page states that this Employer acknowledges that the Union requested recognition, that the employees constitute an appropriate unit, and that the Union has offered to show and/or has shown the Employer membership cards and other written evidence that the Union has been selected by a majority of the employees covered under the agreement. However, Petitioner is not asserting that this CAM contract operates as a 9(a) contract. E.L.S. has not provided Petitioner any notice of intent to withdraw from the CAM contract.

E.L.S. employs cement masons from Petitioner. E.L.S. has employed cement masons from other unions as well, but not for work in the state of Michigan. E.L.S. also performs work in the states of Illinois and Indiana. Some of its Michigan employees travel to these states, but their fringe benefits are paid back to Petitioner.

E. Roncelli, Inc. (Roncelli)

Roncelli is engaged in the business of commercial and industrial contracting out of its facility in Sterling Heights, Michigan. Roncelli was founded in about 1996. All parties stipulate that Roncelli is a construction industry Employer. Roncelli performs inside or building work, as well as outside work such as flat work and curbs, but not road work.

Roncelli employs cement masons in Wayne, Oakland, and Macomb Counties but does not employ cement masons in Monroe or St. Clair counties. Roncelli has a fixed crew but also calls upon Local 1 when additional employees are needed. Pursuant to its amendment at the hearing regarding Roncelli, Petitioner seeks a unit consisting of:

All employees performing cement mason work for the Employer, excluding all work performed in the state of Michigan except for the following counties: Oakland, Macomb, Wayne, St. Clair and Monroe and except for the Upper Peninsula, also excluding guards, supervisors as defined in the Act, and all other employees.

When performing work in Wayne, Oakland and Macomb counties, Roncelli is a party to the 2009-2011 CAM agreement with Local 1 as an independent signatory. Roncelli initially signed with Local 1 on June 30, 2006 by virtue of a "short form" agreement. Intervenors assert that this "short form" adoption of the CAM agreements incorporates the language under *Central Illinois Construction*, 335 NLRB 717 (2001), showing that Local 1 requested majority recognition, and that Roncelli granted such recognition based on Local 1's showing or offering to show proof of its majority support. However, the CAM signature page was not signed by Roncelli. The short form constitutes a separate signature page, and states simply that [Roncelli]

recognizes [Local 1] as the sole exclusive collective bargaining representative. When performing work in Michigan outside of Wayne, Oakland and Macomb counties, Roncelli uses employees from Local 9 and pays Local 9 rates. When Roncelli performs work outside the state of Michigan, such as in Ohio and Indiana, the employees come from union locals in those states.

Roncelli is also signatory to Intervenor Local 9's agreement with the MCE. This labor agreement is effective from August 1, 2009 through July 31, 2012 within the boundaries of the state of Michigan, excluding all the counties in the Upper Peninsula and the counties of Wayne, Oakland, Macomb, Monroe and St. Clair in the Lower Peninsula. The work involved includes all masonry construction: all brick, aerated autoclaved concrete masonry units, and cement finishing. The contract proclaims that it is a 9(a) contract and that Local 9 submitted to Roncelli evidence of majority support and that Roncelli voluntarily recognizes Local 9.

F. Barton Malow Company (Barton Malow)

Barton Malow is engaged in commercial and residential concrete construction in Michigan out of offices in Southfield and Oak Park. The work includes traditional buildings, heavy construction, and power plants. Barton Malow has been operating since 1924. The parties stipulate that Barton Malow is a construction industry employer.

Barton Malow has a set crew of about a dozen cement masons but also hires additional employees as new jobs arise. Barton Malow supplements the steady employees with as many as 30 or 40 employees at a time depending on the needs of projects.

As amended at the hearing regarding Barton Malow, Petitioner seeks a unit of:

All employees performing cement mason work for the Employer in the following counties: Oakland, Macomb, Wayne, and St. Clair, excluding guards, supervisors as defined in the Act, and all other employees.

Barton Malow has been a member of CAM and AGC for "a long" time.

Barton Malow has assigned power of attorney to CAM or AGC with Local 1 for Wayne, Macomb, and Oakland County. When out of this area, Barton Malow sometimes applies the AGC contract to its steady crew and sometimes applies the local contract terms. Barton Malow doesn't use Local 1 employees when work is done out of the state of Michigan, although it will send a foreman from Local 1 to other areas to supervise and manage work, even in Local 9 geographic territory. When Barton Malow signed the power of attorney for AGC, it provided the Association with authority to bargain on its behalf with Local 1 and Local 9 but not authority to bargain with respect to Petitioner.

Since 2004, Barton Malow has also delegated negotiation authority to the MCE to bargaining with Local 9.

When Barton Malow performs work in Lansing, it secures the majority of its crew from the local union, typically Local 9, and sends out one or two employees from its Local 1 crew. When performing work under the Local 9 contract, Barton Malow pays Local 9 rates and benefits.

When performing work outside the state of Michigan, Barton Malow does not generally apply the Local 1 rates and contract. If an emergency arises on a jobsite, Barton Malow may send a set crew out of state but standard procedure would be to hire from a local union and pay cement masons the local rates. If there are no local unions, then Barton Malow pays the local prevailing competitive rates.

G. Albanelli Cement Contractors, Inc. (Albanelli)

Albanelli is a Michigan corporation with an office in Livonia. The parties stipulate that Albanelli is a construction industry employer. Albanelli performs building and site concrete work, including on grades, structural concrete slabs, foundations, sidewalks, paving, curbs, approaches, and driveways within five feet of the building or development perimeter. Cement masons pour concrete in place, whether it be a wall or a floor, strike the cement off to the proper elevation and then finish the surface to create a final product. Albanelli uses a set crew in Wayne, Oakland, and Macomb counties. Albanelli does not use a separate crew to work five feet or more outside the building's footprint. Cement Masons perform work inside the building and then also perform work on sidewalks, paving, curbs and sometimes will work under the same contract, regardless of the work.

For Albanelli, Petitioner seeks a unit of:

All employees performing building and heavy construction, cement mason work for the Employer, excluding guards, supervisors as defined in the Act, and all other employees.

This is the only unit sought that is restricted to "building and heavy construction" cement mason work.

Vice-President Wayne Albanelli signed a power of attorney form with ACCM on September 15, 2004. He authorized ACCM to bargain on his behalf with any local union of the cement masons, bricklayers, or laborers that cover his employees working in the state of Michigan. Indeed, the power of attorney form states that Albanelli testified that it was not his understanding that ACCM is prohibited from negotiating with Petitioner on his behalf, despite the fact that someone has written "Local 1" on his power of attorney form. The power of attorney is not limited to Wayne, Oakland or Macomb counties.

Albanelli's foreman maintains a daily record of work performed on a particular job and turns that record into the operations manager on a daily basis in order to ensure correct payment. If the work is outside work, it is performed under the Michigan Statewide Heavy and Highway (Heavy and Highway) contract - Local 1 which Albanelli signed on March 20, 2009. The Heavy and Highway agreement has lower wages and benefits than the ACCM-Local 1 agreement.

V. GEOGRAPHIC SCOPE

The Employers and Local 1 and BAC International assert that Petitioner is improperly seeking to expand its geographic jurisdictional scope of the Association units beyond Wayne, Oakland and Macomb counties to all of Michigan, excluding Monroe County. The Employers object to the Petitioner's geographic limitations of Barton Malow and Roncelli to Wayne,

Oakland, Macomb, St. Clair, Monroe and the Upper Peninsula as well as the unlimited geographic jurisdictions of Broadcast, Amalio, and Albanelli. Citing *Alley Drywall*, supra, Intervenor Local 1 and Local 9 do not agree with the Employers' position with respect to limiting the geographic scope of the individual Employer petitions.

With respect to the geographic limitations of the three Association units, and the Amalio and Albanelli units, I find that the petitioned for units are appropriate. The Board, in *Premier Plastering, Inc.*, 342 NLRB 1072, 1073 (2004), found that it agreed "with the [I]ntervenor's first proposition that the only appropriate unit would normally include all of the [E]mployer's plasterers without regard to the location of the Employer's jobsites" and makes clear that "where an Employer uses a core group of employees to work at its various worksites regardless of job location, the proper unit description is one without geographic limitation." (citing *Alley Drywall*, 333 NLRB 1005, 1008 (2001)) With respect to the AGC unit, Fessler, Granger, and Angelo Iafrate each utilizes a core group of cement masons to perform work at various locations.²⁰ With respect to the ACCM unit, Ferrini utilizes a core group of masons.²¹ With respect to the CAM unit, there is no geographic limitation in the 2011 table settlement, and its signatory Brenca utilizes a core group of employees to perform its work. The power of attorney forms in evidence for ACCM and CAM do not limit the geographic jurisdiction in the ways sought by the Employers. Amalio also has a core group of cement masons who work throughout Michigan and has authorized ACCM to bargain on its behalf throughout the state of Michigan. Thus, under *Alley Drywall*, the petitioned for units with no geographic limitation are appropriate.

VI. THE APPROPRIATENESS OF THE SINGLE EMPLOYER UNITS

The Employers and Intervenor object to the petitioned for single Employer units. However, such units are clearly not inappropriate under *Deklewa*, 282 NLRB 1375 (1987). In *Deklewa*, the Board found that single employer units could be appropriate, even if the parties had previously engaged in multi-employer bargaining. The critical inquiry is maintaining the appropriate balance between stability in labor relations and employee free choice to petition for representation. Here, as in *Maramount Corp.*, 310 NLRB 508 (1993), the filing of the individual petitions demonstrates employees' desire to exercise such freedom of choice. Moreover, the contractors E.L.S. and Amalio have previously demonstrated their choice to sign the collective bargaining agreements directly, without providing power of attorney to any of the Associations. With respect to those single employers who have chosen to bargain with Local 1 in the past, there have not been any petitions filed for a multi-employer unit. Thus, a finding that the single employer units are inappropriate would undermine employee free choice and not be conducive to the stability of labor relations for those unit employees.

VII. CONTRACT BARS

The purpose of the Board's contract bar doctrine is to achieve a reasonable balance between industrial stability and freedom of employees' choice. The burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park*, 187 NLRB 517 (1970).

²⁰ The record is silent with respect to whether the other AGC contractors in the Association petition utilize a "core group."

²¹ The record is silent as to whether the other ACCM contractors in the Association petition utilize a "core group."

A. Broadcast-ICE Agreement

As a preliminary matter, the Intervenors and the Employers assert that there is a contract bar with respect to Broadcast pursuant to the ICE agreement because it contains the requisite recognition language under *Central Illinois Construction*, 335 NLRB 717 (2001), to establish a 9(a) contract. They assert that the language is not conditional and should be read to establish a 9(a) relationship. *Id.* at 720. See also *Diponio Construction, Inc.*, 357 NLRB No. 99, slip op. at p.3 (2011). The Employers and Intervenors also assert that the testimony of John McIntyre, assistant to the International BAC secretary treasurer, concerning his conversation with Broadcast's vice president Brennan regarding the union's majority status, notwithstanding Brennan's failure to remember the specifics of his interactions with McIntyre in this regard, further supports finding that a Section 9(a) relationship was intended by the parties.

I cannot agree. The ICE contract does not contain sufficient terms and conditions of employment to constitute a bar. The contract sets out that "wages for Employer field employees and any recruited employees shall be paid in accordance with the jobsite agreement." This agreement envisions pre-job conferences in which the key terms of the contracts are resolved project-by-project. The ICE contract provides that "[a]mong other things, the conference shall address craft work assignments and manpower issues." The ICE agreement is more in the nature of a prehire contract, which does not constitute a bar to an election. *S.S. Burford, Inc.*, 130 NLRB 1641, 1643 (1961). A contract cannot serve as a bar if one of its terms is not effective until a local agreement has been completed. *Burns Security Services*, 257 NLRB 387-388 (1981). A contract does not bar an election if executed before any employees have been hired, *Price National Corp.*, 102 NLRB 1393 (1953); *Potlatch Forests*, 94 NLRB 1444 (1951). A basic requirement for a contract to act as a bar is that the parties must be able to consult it to "look for guidance in their day-to-day problems." *Arcraft Displays*, 262 NLRB 1233 (1982). Such guidance cannot be found in the ICE contract. The Employers and the Intervenors also assert that the ICE agreement converted the CAM August 3, 2011 table settlement into a 9(a) contract with respect to Broadcast. Considering that the ICE agreement does not contain the requisite contractual terms, I do not find that such a conversion occurred. Intervenors and the Employers have not carried their burden of proof that the contract acts as a bar.

B. MCE-Barton Malow and MCE-Roncelli Agreements

With respect to the units proposed for Barton Malow and Roncelli, Petitioner has carved out a residual unit excluding areas that are not covered by the MCE-Local 9 agreement which is effective through July 31, 2012. The MCE agreement is in effect within the boundaries of the state of Michigan, excluding all the counties in the Upper Peninsula and the counties of Wayne, Oakland, Macomb, Monroe and St. Clair in the Lower Peninsula. The work involved includes all masonry construction and cement finishing. The contract proclaims itself to be a 9(a) contract and states that Local 9 submitted to the Employer evidence of majority support and that the Employer voluntarily recognizes Local 9.

The type of residual unit sought by Petitioner can be appropriate "if it includes all unrepresented employees of the type covered by the petition." *G.L. Milliken Plastering*, 340 NLRB 1169 (2003), citing *Carl Buddig & Co.*, 328 NLRB 929 (1999). The geographic

limitations in the MCE contract are clear. See also *Premier Plastering*, 342 NLRB 1072 (2004). Petitioner has reasonably carved out the area limited by the Local 9-MCE 9(a) contract.

However, Intervenors and the Employer assert that by virtue of a traveler clause, the Roncelli-Local 9 and Barton Malow-Local 9 MCE Agreements are binding throughout the state. The clause in Article X, Section 15 provides that “[w]hen the employer has any work covered by this agreement to be performed in Michigan, Ohio or Indiana he shall become signatory to the respective [BAC] local agreement or will be bound to the full terms of conditions to this agreement.”

Without scrutinizing the traveler cause, I find that the MCE agreement does not serve as a bar given the facts of these cases.

The effective dates of the MCE agreement are from August 1, 2009 through July 31, 2012. The petition was filed on October 12, 2011. Although when initially filed the contract may have been a bar, it cannot now serve as a bar under the holding of *Royal Crown Cola*, 150 NLRB 1624, 1625 (1965) that “a petition will not be dismissed, even though prematurely filed, if a hearing is directed despite the prematurity of the petition and the Board’s decision issues on or after the 90th day preceding the expiration date of the contract.”

C. MITA Agreements and Heavy and Highway Agreement

For some Employers, inside work falls under the Associations’ contracts, and outside work is covered by the MITA agreements. Petitioners and Intervenors are each parties to 2008-2013 MITA contracts. The Intervenors’ contracts include the requisite language under *Central Illinois*, supra, to establish 9(a) contracts, while the Petitioner-MITA contract does not.

The record discloses that some ACCM contractors, who are not signatory to the MITA agreements, perform outside work under the Association agreement, and pay the higher rate found in the Association agreement. Most of the contractors which have signed on with Petitioner are not affiliated with the MITA agreement. Only a few contractors in the Associations have signed onto both Petitioner’s building contract and the MITA agreement.

The MITA contracts have different wage packages, dues, pension, and other fringe fund provisions than Petitioner’s collective bargaining agreements with the Associations.

1. Brencal and Angelo Iafrate

These two Employers assert that the petitions with respect to, Brencal and Angelo Iafrate, respectively, are barred by the MITA agreement the Employers have with Petitioner’s International Union OPCMIA. However, it is well established that an employer’s recognition of, and current contract with, a petitioning union does not bar a petition for certification by that union. *Duke Power*, 173 NLRB 240 (1969). A recognized bargaining agent is entitled to the benefits of certification. Id; *General Box*, 82 NLRB 678 (1949). In this case, the vice president of the OPCMIA International testified that he negotiated the MITA agreement in Michigan, that he was aware of the existence and pendency of the instant petitions, and that the OPCMIA chose

not to intervene and is not asserting any contract bar. The Employers have not met their burden of proof to establish a contract bar.

2. Albanelli - Local 9 and Local 1 Heavy and Highway Agreement

The Employers and Intervenors also assert that the 2008-2013 Heavy and Highway Agreement acts as a contract bar for Albanelli. However, this Agreement covers only highway construction and airport construction while Petitioner seeks only building and heavy construction cement mason work. Testimony from Albanelli's vice president, Wayne Albanelli, established that employees performed under the Heavy and Highway Agreement when performing the highway and airport construction work and under the ACCM contract when performing building and heavy construction work, and the foremen keep a daily record of who is doing what on a particular job. Thus, the Heavy and Highway Agreement does not serve as a bar because it involves different work.

Moreover, the Employers assert that the contract is a bar because it was not filed during the 30 day "open period" running from the 90th day to the 60th day prior to the existing contract's termination date - or in this case, the last day of the third year of the contract which was March 20, 2012. The petition was filed on October 12, 2011. However, in *Maramount Corp*, 310 NLRB 508, 512 (1993) the Board affirmed its longstanding policy established in *Royal Crown Cola*, 150 NLRB 1624, 1625 (1965) that "a petition will not be dismissed, even though prematurely filed, if a hearing is directed despite the prematurity of the petition and the Board's decision issues on or after the 90th day preceding the expiration date of the contract." Thus, the Heavy and Highway Agreement does not act as a bar.

VIII. APPROPRIATENESS OF THE CRAFT UNITS

The Employers seek to limit the scope of the unit to "building and heavy construction work ..." pursuant to the language in the AGC, CAM and ACCM labor contracts.²² Petitioner seeks units of employees "performing cement mason work, except in the case of Albanelli where it adopts the Employer's language. The record shows that inside and outside masons perform the same type of work and that the skills are interchangeable. The test for whether a craft union is appropriate is whether a group constitutes "a readily identifiable and homogenous group with a community of interest separate and apart from the other employees." *R.B. Butler, Inc.*, 160 NLRB 1595 (1966), *Del Mont Construction Co.*, 150 NLRB 85 (1965). Other than a fairly arbitrary five foot dividing line between the inside and outside work, there has been no showing of a significant difference between performing inside and outside work; the masons are a "readily identifiable and homogenous group." On the other hand, it is clear that Albanelli does rigorously maintain the five foot dividing line and pays its employees accordingly. To dismiss the petition with respect to Albanelli would create the anomalous situation where Albanelli's cement masons would be represented by a union when performing outside work but not have

²² Local 1 and the BAC International note that they do not agree with the Employers that any "bargaining units should be functionally limited, i.e. limited to cement masons performing building and heavy ("commercial") work only and not "road work," because the same employees generally perform both types of work, the work is similar and requires similar skills, and there is an obvious community of interest as to both types of work.

representation if they chose when performing inside work. As a result, in order to allow the inside masons their free choice of representative, the current unit description is appropriate.

IX. INTERVENORS ON BALLOT

Intervenors Local 1 and Local 9 requested that they be named jointly on the ballot for DeMaria, Amalio, Roncelli, Barton Mallow and Albanelli.²³ Two or more labor organizations are permitted to act jointly as bargaining representative for a single group of employees. *Vanadium Corp of America*, 117 NLRB 1390 (1957); and *S.D. Warren Co.*, 150 NLRB 288 (1965). See also *Utility Services, Inc.* 158 NLRB 592, fn 3 (1966) (The Board found that the “requisite intention to represent the employees jointly is sufficiently supported by the filing of the joint petition herein”) Further, with regard to Albanelli, the Heavy and Highway Agreement at issue is a joint contract between Local 1-Local 9 and Albanelli. For the foregoing reasons, they will appear jointly on ballots as indicated in the Direction of Elections, below.

Petitioner questions the Intervenors’ respective status to appear on the ballots, at the same time conceding that it is a purely administrative matter and not appropriate for litigation. As indicated supra, Intervenors’ motions to intervene were granted the first day of hearing, based on review of either contracts or authorization cards, or both, that were submitted in support of the motions. Although the units have been modified from those Petitioner initially sought, none have been expanded. Moreover, in each instance intervention was based on a contract, and as noted at 11022.1(d) of the Representation Case handling manual

A union will be regarded as satisfying the showing requirement . . . as an intervenor in a[n] RC . . . if: (d). it is the party to a currently effective or recently expired exclusive collective bargaining agreement covering the employees in whole or in part. In the construction industry, a recently expired 8(f) agreement will suffice as a union’s showing of interest for a[n] RC petition. *Stockton Roofing Co.*, 304 NLRB 699 (1991).

I am satisfied with the adequacy of the parties’ showing of interest.

5. Conclusion

For the reasons set forth above and the record as a whole, the following employees of the Employers constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Associated General Contractors of Michigan

Case 07-RC-064788

All employees performing cement mason work in the state of Michigan, except for Monroe County, for the following members of the Associated General Contractors of Michigan: 3L.K. Construction, LLC; Fessler & Bowman, Inc. (for the counties of

²³ Local 1 sought to include the International BAC, jointly, on these same ballots, however Broadcast is the only case in which the International BAC has intervened, and thus it will not be named jointly with Local 1 and Local 9 on any other ballot. Local 1 withdrew from the ballot in Broadcast.

Macomb, Oakland, Wayne, Hillsdale and Lenawee only); Alberici Constructors; George McIntosh, Inc.; Angelo Iafrate Construction Company; George W. Auch Company; Aristeo Construction Company; Granger Construction Company; Brix Corporation; Commercial Contracting Corporation; Siwek Construction Company, Devon Industrial Group; DIG/CCC; W-3 Construction Company; and, E&L Construction Group, Inc; but excluding guards, supervisors as defined by the Act, and all other employees.

Associated Concrete Contractors of Michigan

Case 07-RC-064796

All employees performing cement mason work in the state of Michigan, except for Monroe County, for the following members of Associated Concrete Contractors of Michigan: Creative Cement Company; North Channel Construction Co, Inc.; V&O Cement Co.; Hartwell Cement Co.; and Ferrini Cement Company; but excluding guards, supervisors as defined by the Act, and all other employees.

Construction Association of Michigan

Case 07-RC-064723

All employees performing cement mason work in the state of Michigan, except for Monroe County, for the following members of Construction Association of Michigan: Alford Construction Group; JJ Barney Construction; Brencal Contractors, Inc.; CamBridge Associates, LLC; Christman Concrete Industrial Floors, LLC; Dan's Cement, Inc.; Delaney Construction, Inc.; Detroit Water Constructors; Elcon Construction; Fort Wayne Contracting, Inc.; HB Contracting Service, Inc.; Kerson Construction, Inc., Lansing Poured Wall; RL Shekell, Inc.; TDS Contractors, Inc.; and, Walsh Construction Company; but excluding guards, supervisors as defined by the Act, and all other employees.

Broadcast Design & Construction Services, Inc.

Case 07-RC-064603

All employees performing cement mason work for the Employer out of its facility located at 345 N. Groesbeck Highway, Mt. Clemens, Michigan; but excluding guards, supervisors as defined in the Act, and all other employees.

DeMaria Building Company, Inc.

Case 07-RC-064870

All employees performing cement mason work for the Employer out of its facility located at 45500 Grand River Avenue, Novi, Michigan; but excluding guards, supervisors as defined in the Act, and all other employees.

Amalio Corporation, Inc.

Case 07-RC-064611

All employees performing cement mason work for the Employer out of its facility located at 6655 Cotter Avenue, Sterling Heights, Michigan; but excluding guards, supervisors as defined in the Act, and all other employees.

E.L.S. Construction, Inc.

Case 07-RC-064787

All employees performing cement mason work for the Employer in the state of Michigan, except for the county of Monroe, out of its facility located at 180 Engelwood Drive, Suite H, Lake Orion, Michigan; but excluding guards, supervisors as defined in the Act, and all other employees.

Roncelli, Inc.

Case 07-RC-66599

All employees performing cement mason work for the Employer out of its facility located at 6471 Metropolitan Parkway, Sterling Heights, Michigan, excluding all work performed in the state of Michigan except for Oakland, Macomb, Wayne, St. Clair and Monroe counties and the Upper Peninsula; but excluding guards, supervisors as defined in the Act, and all other employees.

Barton Malow Company

Case 07-RC-066611

All employees performing cement mason work for the Employer in Oakland, Macomb, Wayne, and St. Clair counties, out of its facility located at 26500 American Drive, Southfield, Michigan; but excluding guards, supervisors as defined in the Act, and all other employees.

Albanelli Cement Contractors, Inc.

Case 07-RC-066641

All employees performing building and heavy construction cement mason work for the Employer out of its facility located at 12725 Fairlane Street, Livonia, Michigan; but excluding guards, supervisors as defined in the Act, and all other employees.

Those eligible to vote shall vote as set forth in the following Direction of Elections.^{24, 25}

²⁴ The parties did not stipulate to use the construction industry eligibility formula set forth in *Daniel Construction Co.*, 133 NLRB 264 (1961), as modified in 167 NLRB 1078 (1967) and *Steiny & Co.*, 308 NLRB 1323 (1992). Absent a stipulation not to use the *Daniel/Steiny* eligibility formula, the formula applies to all construction industry elections. *Signet Testing Laboratories*, 330 NLRB 1 (1999), citing *Steiny & Co.* thus, the *Daniel/Steiny* eligibility formula will apply, as noted in the attached Directions of Election.

²⁵ The parties at the hearing each stipulated and agreed to the conduct of a mail ballot election, only, for each of the units found appropriate herein.

DIRECTION OF ELECTIONS

The National Labor Relations Board will conduct a secret ballot election among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by:

ASSOCIATED GENERAL CONTRACTORS OF MICHIGAN

Case 07-RC-064788

Local 514, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO

or

Local 1, International Union of Bricklayers and Allied Craftworkers, AFL-CIO

or

No Union.

ASSOCIATED CONCRETE CONTRACTORS OF MICHIGAN

Case 07-RC-064796

Local 514, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO

or

Local 1, International Union of Bricklayers and Allied Craftworkers, AFL-CIO.

or

No Union.

CONSTRUCTION ASSOCIATION OF MICHIGAN

Case 07-RC-064723

Local 514, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO

or

Local 1, International Union of Bricklayers and Allied Craftworkers, AFL-CIO.

or

No Union.

BROADCAST DESIGN & CONSTRUCTION SERVICES, INC.

Case 07-RC-064603

Local 514, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO

or

International Union of Bricklayers and Allied Craftworkers, AFL-CIO

or

No Union.

DEMARIA BUILDING COMPANY, INC.

Case 07-RC-064870

Local 514, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO

or

Local 1, International Union of Bricklayers and Allied Craftworkers, AFL-CIO, and Local 9, International Union of Bricklayers and Allied Craftworkers, AFL-CIO.

or

No Union.

AMALIO CORPORATION, INC.

Case 07-RC-064611

Local 514, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO

or

Local 9, International Union of Bricklayers and Allied Craftworkers, AFL-CIO.

or

No Union.

E.L.S. CONSTRUCTION, INC.

Case 07-RC-064787

**Local 514, Operative Plasterers' and Cement Masons' International
Association of the United States and Canada, AFL-CIO**

or

**Local 9, International Union of Bricklayers and Allied Craftworkers,
AFL-CIO.**

or

No Union.

RONCELLI, INC.

Case 07-RC-66599

**Local 514, Operative Plasterers' and Cement Masons' International
Association of the United States and Canada, AFL-CIO**

or

**Local 1, International Union of Bricklayers and Allied Craftworkers,
AFL-CIO, and Local 9, International Union of Bricklayers and Allied
Craftworkers, AFL-CIO.**

or

No Union.

BARTON MALOW COMPANY

Case 07-RC-066611

**Local 514, Operative Plasterers' and Cement Masons' International
Association of the United States and Canada, AFL-CIO**

or

**Local 1, International Union of Bricklayers and Allied Craftworkers,
AFL-CIO, and Local 9, International Union of Bricklayers and Allied
Craftworkers, AFL-CIO.**

or

No Union.

Local 514, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO

or

Local 1, International Union of Bricklayers and Allied Craftworkers, AFL-CIO, and Local 9, International Union of Bricklayers and Allied Craftworkers, AFL-CIO.

or

No Union.

The details of the mail ballot elections will be specified in the notices of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

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. Also eligible to vote are all employees who have been employed for 30 working days or more within the 12 months preceding the eligibility date or if they have had some employment in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. 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, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who 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 quit or 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.

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).

Accordingly, it is hereby directed that within 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.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **May 15, 2012**. No extension of time to file this list will 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 to the Regional Office by electronic filing through the Agency website, www.nlr.gov,²⁶ by mail, or by facsimile transmission at **313-226-2090**. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **four** copies of the list, 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. Posting of Election Notices

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).]

²⁶ To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Regional Office**, and follow the detailed instructions.

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

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 20570-0001**. This request must be received by the Board in Washington by **May 22, 2012**. The request may be filed electronically through **E-Gov** on the Board's website, **www.nlr.gov**,²⁷ but may **not** be filed by facsimile.

ORDER SEVERING CASES

To allow for an orderly processing of the elections, I hereby order, pursuant to Section 102.72 of the Board's Rules and Regulations, as amended, that Associated General Contractors, Case 07-RC-064788, Associated Concrete Contractors of Michigan, Case 07-RC-064796, Construction Association of Michigan, Case 07-RC-064723, Broadcast Design and Construction Services, Inc., Case 07-RC-064603, DeMaria Building Company, Inc., Case 07-RC-064870, Amalio Corporation, Inc., Case 07-RC-064611, E.L.S. Construction, Inc., Case 07-RC-064787, Roncelli, Inc., Case 07-RC-66799, Barton Malow Company, Case 07-RC-066611, and Albanelli Cement Contractors, Inc., Case 07-RC-066641, be severed from each other.

Dated at Detroit, Michigan this 8th day of May 2012.

(SEAL)

/s/ Terry Morgan

Terry Morgan, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

²⁷ To file a Request for Review electronically, go to the Agency's website at **www.nlr.gov**, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Board/Office of the Executive Secretary** and follow the detailed instructions.