

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 1**

**ELECTRIC BOAT CORPORATION<sup>1</sup>**

**Employer**

**and**

**Case 01-RC-124746<sup>2</sup>**

**UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS  
OF AMERICA, LOCAL 1302<sup>3</sup>**

**Petitioner**

**and**

**METAL TRADES COUNCIL OF  
NEW LONDON COUNTY, AFFILIATED  
WITH AFL-CIO**

**Intervenor**

**APPEARANCES:**

Daniel P. Bordoni, Attorney, of Washington, D.C., for the Employer.  
Thomas Landry, Attorney, of Boston, Massachusetts, for the Petitioner.  
Greg Adler, Attorney, of Hartford, Connecticut, for the Intervenor.<sup>4</sup>

**DECISION AND DIRECTION OF ELECTION**

At issue is whether severance of the petitioned for unit of approximately 220 carpenters from the broader production and maintenance unit of approximately 2225 employees is appropriate.

The Petitioner (or sometimes Local 1302) seeks to sever the existing unit and represent a unit of the Employer's full-time and regular part-time carpenters, checkers,

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

<sup>2</sup> This case was transferred to the undersigned pursuant to the interregional assistance program under OM 03-77, for decision writing purposes only.

<sup>3</sup> The Petitioner's name appears as amended at hearing.

<sup>4</sup> The Hearing Officer, without objection, granted the Intervenor's status in the proceedings.

radiographic lineman, carpenter-divers, joiners, joiner-models, and joiner upholsters employed by the Employer in the bargaining unit certified in NLRB Case 01-RC-02373 and Case 01-AC-59; but excluding all other production employees and maintenance employees, all clerical employees, fire fighters, clericals in the security function, employees represented by the Marine Draftsmen Association, employees represented by the Pattern Makers Association, and all other employees employed by the Employer.<sup>5</sup>

The Intervenor (or sometimes herein the MTC) is the current certified bargaining representative for all production and maintenance and clerical employees (the Unit) including employees in the steel trades, carpenters, clerical employees, electricians, laborers, machinists, painters, pipefitters, and transportation employees.<sup>6</sup>

The Employer and Intervenor maintain that the petitioned-for unit is not an appropriate craft unit and should not be severed, by claiming, among various assertions, that the MTC has historically represented those carpenters that Petitioner seeks to carve out; that the carpenters do not constitute a true craft and require less training than other employees; that there is frequent interchange between classifications; that the carpenters have not maintained a separate identity; that the work of the carpenters is tightly integrated with the work of other employees in the existing Unit; and the pattern industry-wide supports single unit facilities at maritime operations.<sup>7</sup>

On the other hand, Petitioner contends that the employees in the petitioned-for unit constitute a separate, homogenous, and functionally distinct craft unit for which a tradition of separate representation exists; that Petitioner has historically represented its employees in the proposed Unit; and that there is limited interchange between carpenters and other trades.

In reviewing the facts of this case with respect to the applicable Board law, I conclude that Petitioner has satisfied all but one of the criteria set forth by the Board with respect to when severance is appropriate. Thus, I find that Petitioner has satisfied its burden of establishing that the carpenters constitute a separate, identifiable craft unit appropriate for a severance election.

## **I. Overview**

The Employer builds, outfits, and tests submarines for the United States Navy.

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<sup>5</sup>Petitioner amended the unit description, to reflect the consolidation of the maintenance carpenter job classification with other job classifications. Also, there are no joiner checkers or radiographic lineman currently employed, however the parties did not dispute the inclusion of these classifications in the unit.

<sup>6</sup> All parties stipulated that there is no contract bar to an election in this case.

<sup>7</sup> This is the position the Intervenor took during the hearing. In brief, the Intervenor diverged from the Employer's position stated above with respect to acknowledging that the carpenters are a true craft (albeit they do not require as much training as other trades and obtain most of that training on the job), and have maintained a separate identity.

The Employer is currently completing the production of a “Virginia Class” submarine. The vessel was initially constructed in sections at other Employer facilities located in Newport News, Virginia, and Quonset Point, Rhode Island. Four sections of the submarine were then shipped to the Employer’s sprawling complex in Groton, Connecticut (the Groton complex), to be loaded with equipment. At the Groton complex, the Employer performs the final welding of the four hull butts, tests all the systems and operates them in conjunction with the Navy’s requirements. The Employer’s goal is to complete this process within about 55 months. Approximately 10 million man-hours are involved in making one ship. About three million of those hours are performed in Groton. About 205,000 hours of work are performed by employees in the carpenter classification on each submarine.

In addition to producing the Virginia class submarine, the Employer also conducts repair work on “688” submarines which have not been produced at Groton for 20 years or so. Also, employees occasionally work at locations other than the Groton facility. There are five naval shipyards in the United States, and the Groton complex provides resources to all of them to help meet schedule dates on submarines that are in for repairs. At one point in 2013, upwards of 300 employees from the Employer’s Groton complex were working in off-site public shipyards. As of the date of the hearing, there were 100 of the Employer’s employees from different trades in the Puget Sound Naval Shipyard.

Vasco Castro III is the Manager of Operations for Carpenters/Painters. Seven general foremen report to Castro: R. Beaudry, P. Olivio, M. Chance, D. Lacross, A. Cibarich, E. Montie, and K. Dawley.<sup>8</sup> Reporting to the general foremen are seven supervisors, including D. Lavellee and P. Willette who are responsible for supervising carpenters.<sup>9</sup> There are also between 10 and 15 front line foremen<sup>10</sup> reporting to the general foremen.

The employees in the proposed carpenter unit are employed by the Employer at the Groton complex, which spreads over 118 acres. It consists of multiple buildings, docks, machine shops, a pipe shop, cafeterias and used and unused docks.

Employees in the carpenter classifications work in different departments throughout the Groton complex. Two hundred eight carpenters - and no other employees - work in Department 252. Two carpenters work in Department 501 with the “facilities

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<sup>8</sup> At the hearing, all parties stipulated that general foremen are supervisors within the meaning of Section 2(11) of the Act. They stipulated that the general foremen possess and exercise the authority to assign and direct the work, and possess the authority to effectively recommend discipline for the employees at issue herein, while utilizing independent judgment in exercising that authority.

<sup>9</sup> It was further stipulated that the seven supervisors are supervisors within the meaning of Section 2(11) of the Act, and as such possess and exercise the authority to assign and direct employees in the petitioned for group and others. In doing so, they utilize independent judgment in exercising that authority. The stipulation includes three offsite supervisors - Avery, Greco and Gaynor.

<sup>10</sup> The record is silent with respect to the Section 2(11) status of the front line foremen.

organization.” Department 545 consists of the transportation employees, and the one carpenter in this department reports directly to the transportation representatives, not the foremen from Department 252. The four carpenters in Department 642 are instructors. Department 642 is a department that trains all employees, mostly in nuclear subjects.

The Employer operates three shifts in the Groton complex. The first shift runs from 6:30 a.m. to 2:30 p.m. The second shift runs from 3:30 p.m. to 11:30 p.m. The third shift runs from 11 p.m. to 7 a.m.

## **II. Board Law on Severance Criteria**

In order to determine whether severance is appropriate, the Board applies several factors: 1) whether the collective bargaining history supports severance; 2) whether the employees sought to be severed participate in a formal training or apprenticeship program; 3) whether the employees’ work is functionally integrated with the excluded employees; 4) whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; 5) whether the Employer assigns work according to need rather than on craft or jurisdictional lines; 6) whether the petitioned for employees share common interest with other employees including wages, benefits and cross training; and, 7) the pattern of collective bargaining in the industry. *Mallinckrodt Chemical Works*, 162 NLRB 387, 397 (1967); *Burns & Roe*, 313 NLRB 1307, 1308 (1994). Moreover, in non-construction industry cases, the Board will “determine the appropriateness of the craft unit sought in light of all factors present in the case.” *E.L. Dupont & Co.*, 162 NLRB 413, 417 (1966), *MGM Mirage*, 338 NLRB 529, 532 (2002). The party seeking severance has the burden of proof. *Metropolitan Opera Ass’n*, 327 NLRB 740, 752 (1999).

## **III. Application of Board Law**

### **A. The History of Collective Bargaining**

#### ***1. The Intervenor Has a Longstanding History of Representing a Plant-Wide Unit***

The Board examines the history of collective bargaining in order to determine whether employees’ need for severance outweighs “the industrial stability and resulting benefits of an historical plant-wide bargaining unit.” *Malinckrodt Chemical Works*, 162 NLRB 387, 393 (1967). On initial presentation, it appears that the longstanding history of collective bargaining between the Intervenor and the Employer supports the position that severance of a long standing unit would be inappropriate. After all, the recognition clause of the most recent collective bargaining agreement sets forth that the bargaining unit was certified by the National Labor Relations Board in about 1945.<sup>11</sup>

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<sup>11</sup> In 1979, security guards were excluded from the unit.

The Employer and the Intervenor have entered into a series of collective bargaining agreements covering all of the employees in the petitioned-for-unit, in addition to the employees in the eight other unions - Boilermakers Local 614 (which includes the steel trades), OPEIU Local 106, IBEW Local 261, Laborers Local 547, Painters Local 1122, Pipefitters Local 777, and Teamsters Local 439. The most recent agreement was effective from about November 8, 2008 through April 11, 2014.<sup>12</sup> The agreement is signed individually by a representative of each of the unions.

The Intervenor has its own by-laws. It has been granted a charter by the Metal Trades Department Executive Council of the AFL-CIO, Article 1 which states that membership in the MTC shall be confined to national/international organizations which are affiliated with the AFL-CIO. The Intervenor meets once a month at the Boilermaker's hall. Each local union is allotted six people to attend these monthly meetings.

## ***2. Petitioner's History of Representing the Carpenters***

On the other hand, Petitioner also has a long history of representing carpenters at the Employer, albeit under the umbrella of the Intervenor. Petitioner has been chartered since 1944 to do so.

Petitioner holds monthly membership meetings. Petitioner has its own Executive Board that is elected by the membership. Carpenters elect their own stewards. There are five Local 1302 stewards. The Intervenor has never played any role in appointing stewards for Petitioner. The Intervenor has not previously had any role in choosing or selecting leadership for Petitioner. Local 1302 also has its own charter, by-laws, membership meetings, and dues requirements.

Most of the carpenters' grievances are resolved on the shop floor between local area stewards and employer representatives and are not reduced to writing. If such efforts are unsuccessful, the carpenter's steward contacts the carpenter's chief steward to set up a meeting. If there is a disciplinary issue, the carpenters' representatives try to work with the employee's supervisor and settle the matter without a grievance. If a disciplinary slip is issued to a carpenter, the Petitioner takes the dispute to the formal grievance procedure.

The carpenters' chief steward can resolve grievances at a meeting with the human resources representatives at or before the first step of the grievance procedure without any MTC involvement or prior approval. In accordance with Article VI, Section 2A of the collective bargaining agreement, the first step grievance hearing includes the

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<sup>12</sup> At the time of the hearing, the MTC and the Employer had not yet agreed upon a new collective bargaining agreement.

Petitioner's area steward, the chief steward, and a few members of human resources, as well as a supervisor involved in the issue. Three representatives of the Employer and three from Petitioner attend these meetings.

If the grievance is not resolved at Step 1, the grievance can be elevated to Step 2. The carpenters' chief steward sets up a Step 2 meeting with one of the Intervenor's chairpersons and representatives from human resources. Pursuant to Article VI, Section 2B of the collective bargaining agreement, the grievance is heard by five representatives of the MTC appointed by the President of the MTC and five representatives of the Employer.

Previously, the nine local unions at the Employer have voted whether to take a grievance to arbitration where the grievant was represented by the Intervenor's attorney. The Intervenor has pursued two carpenter grievances to arbitration over the past couple of years, and has represented carpenters in arbitrations.

A dispute recently arose between the Intervenor and Petitioner with respect to a carpenter whose case went to arbitration. Local 1302, rather than the MTC paid the attorney's fee. Testimony varies as to whether this was because Petitioner's Chief Steward Tardif volunteered to pay, or because the Intervenor required that the carpenters pay for the attorney because the Petitioner was no longer paying its per capita dues to the Intervenor. Previously, in a discharge grievance, Petitioner paid for half the cost of the stenographer, the room, and the arbitrator while the Intervenor paid for the attorney. The Intervenor paid all of the costs for a contract interpretation grievance.

### ***3. The Employer's History of Bargaining with Multiple Units***

There are two other unions at the Groton complex: the Marine Draftsmen of America (MDA) and the Pattern Makers Association. The MDA is a professional technical unit. The Employer bargains separately with each union, and has a separate collective bargaining agreement with each union. These bargaining relationships have existed for decades.

### ***4. The Dispute between the United Brotherhood of Carpenters & Joiners of America and the AFL-CIO***

The United Brotherhood of Carpenters & Joiners of America (UBC or International Carpenters) disaffiliated from the AFL-CIO on March 29, 2001. At that time, the AFL-CIO's president, John J. Sweeney directed its Metal Trades Department (MTD) to take all necessary steps to disaffiliate the UBC from the MTD by September 5, 2003. By letter dated August 21, 2003, the President of the MTD, Ronald E. Ault, voiced his objection. Ault noted that there were several examples where local unions which

were not affiliated with the AFL-CIO on the national level, such as the Teamsters, remained as participating unions within a number of metal trades councils.

### *5. The Solidarity Charter*

Postponing the current dilemma for five years, on February 24, 2006, the AFL-CIO issued Petitioner an “AFL-CIO Solidarity Charter” which enabled it to reaffiliate with the Intervenor without membership in the AFL-CIO. It was not until June 1, 2011 when the MTD sent letters to various metal trades councils (herein Councils) informing them that carpenters would finally be excluded from the metal trades and the Solidarity Agreement would be revoked.

Around June or July 2011, in a position statement, MTD President Ron Ault set forth his reasons why he thought revocation of the Solidarity Agreement should **not** be taken. He warned of future litigation. He noted that numerous employees covered under Council contracts had signed authorization cards designating carpenters locals as their representatives and directing that their withheld dues payments should be paid to these locals.

Nevertheless, about July 2011, Ault sent an email to the MTD Executive Council with jurisdictional recommendations concerning the carpenters at the various Councils. With respect to the Employer’s carpenters, the recommendations divided the carpenters among three other unions. Carpenters who performed rubber sound insulation were to become part of the International Union of Painters and Allied Trades (IUPA). Carpenters and joiners would be part of the International Brotherhood of Boilermakers (IBB), and the carpenter-divers would become part of Laborers International Union of North America (LIUNA). The carpenters have expressed concern to the among themselves and to Petitioner through Tardif about their seniority and future representation. For example, the new jurisdictional recommendations did not cover all of the occupational classifications that are within the current carpenter jurisdiction. The recommendations do not include carpenters who perform the Mold in Place (MIP) which comprises a large percentage of the carpenters’ work. Also, the six or seven carpenter-divers would be outnumbered if merged into the unit of one hundred seven laborers. Indeed, only four local unions have fewer members than the carpenters. If carpenters were reassigned to the Boilermakers, the Electricians, the Machinists, or the Pipefitters, the carpenters in those local unions would also be outnumbered.

Petitioner attempted to negotiate a local solidarity agreement with the Intervenor, which it submitted to the MTC President Delacruz on December 18, 2013. Among other provisions, the proposed agreement provided that Petitioner would pay a quarterly fee to the Intervenor, the carpenters would retain the right to appoint/elect stewards, and dues check off for carpenters would be remitted to the Petitioner. Moreover, the agreement provided the carpenters would be able to vote on all MTC matters, as they had in the past;

and that the Intervenor would not take action to reduce or eliminate occupational titles represented by the carpenters. On January 18, 2014, MTC President DelaCruz sent the carpenters' proposed agreement to MTD President Ault and asked him "[i]s there any way they can remain in our council?"

### ***6. Negotiations Proceed Without the Carpenters***

Previously, all the chief stewards, including the Petitioner's chief steward, participated in negotiations for the collective bargaining agreement. Last year, before the contract negotiations began, Petitioner's chief steward Tardif met with the other chief stewards and Intervenor's president DelaCruz and reviewed the memos and every article of the collective bargaining agreement. At that time, Tardif recommended proposals relating to the carpenters.

On February 27, DelaCruz notified Tardif that he would not be permitted to continue to participate in the negotiations as a result of a directive from MTD.<sup>13</sup>

The Petitioner contends that the Intervenor cannot adequately represent the carpenters in negotiations. While the other local unions might have basic knowledge of carpenters' issues, their knowledge is not as extensive as Petitioner's. Intervenor President DelaCruz himself acknowledged that his knowledge of the carpenter trade was limited.

At the time of the hearing, Tardif had not had any further discussions with DelaCruz or any of the chief stewards concerning negotiations. Tardif had not received any further information concerning what would happen to the carpenters' work assignments after the negotiations were completed. There were no carpenter stewards participating in the negotiations, except indirectly, in that there was a proposal in negotiations to increase carpenter-divers' pay that was suggested by the laborers to the MTC. This idea came from Tardif when he was participating in the negotiation process before he was asked to leave.

None of the employees on the bargaining committee have ever worked as a carpenter or previously represented carpenters. Those representatives still at the bargaining table arrived at a tentative agreement removing carpenters from the recognition clause of the collective bargaining agreement.

Under Article VI of the collective bargaining agreement, employees in the carpenters and other trades are entitled to a chief steward. There is to be one union steward for every fifty employees. There have been limited previous instances when

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<sup>13</sup> The Intervenor acknowledges that Petitioner's chief steward was present at the table in prior negotiations. Now, Petitioner's elected chief steward will return to working in the shipyard, and no other carpenter will hold that position.

carpenters are represented by union representatives other than carpenter stewards. For example, if someone is on a road job away from the complex, stewards from various trades could be sent, and the president of the MTC will appoint a MTC steward as the point of contact for all employees that are assigned to that road job. There are also MTC benefit representatives, and safety representatives for all employees.

Each local in the MTC selects its own stewards - some are voted in and some are appointed. As noted above, the carpenters elect their stewards, whereas stewards for the painters, laborers, and boilermakers are appointed by the business agent for the affiliated international.

A strike authorization vote was held on March 28. Five or six hundred notices were distributed and posted, yet copies were not provided to the carpenter chief steward Robert Tardif or president Mike Malone. According to Intervenor President DelaCruz, carpenters were eligible to vote in the strike authorization vote. However, a representative from the Laborers collected carpenters' votes during some, but not all of the time allotted for voting.

***7. Analysis: The Collective Bargaining History of the Parties Dictates a Finding That a Severance Election is Appropriate***

As a preliminary matter Petitioner asserts that severance is warranted here because there is a "schism" within a federation, which results in a disruption of existing inter-union relationships, and the employees seek to change their representatives for reasons related to the conflict, resulting in such confusion that stability can only be restored by an election. Petitioner cites *Syscon Int'l, Inc.*, 322 NLRB 5339, 543 (1996) for this proposition. However, this case has no bearing on the instant matter as it involved an employer's withdrawal of recognition, not a petition to sever a unit.

The Employer's human resources manager, Steven Alger, posits that labor stability would be undermined by a "domino effect" if the carpenters were allowed to secede and that other unions may also try to separate from the MTC which would incite unrest over work practices, grievances, and instability. However, Alger also stated that he couldn't answer if there would be any negative consequences if the carpenters had an opportunity to bargain with the Employer. While the Employer's Director of Operations, Michael Alu expressed his belief that "[i]ts like two different families feuding and it affects the entire family." Alu also stated that he does not object if the carpenters are at the bargaining table and that it is his experience that Local 1302 represents its members well. Thus, the Employer has raised speculative harms that would come from severance that are not based on its actual relationship with the carpenters.

In *Mallinckrodt Chemical Workers*, supra, the Board emphasized the need for stability in labor relations as the reason to maintain a broader unit. However, the MTD's

decision to remove the carpenters from their long-held position on the bargaining team and in processing grievances, as well as the uncertainty involved in divvying up the carpenters among other trades, some as yet unspecified, cannot be construed as leading to stability. Indeed, even MTC President DelaCruz understood that it was not “in the best interest of the council to separate the carpenters from the bargaining unit.” MTD President Ault also understood that chaos could result.

Moreover, the Board’s holding in *Mallinckrodt Chemical Workers*, that a severance election is not appropriate if there is a history of a broader unit, can be distinguished. In that case, the Board explicitly found that the “record does not demonstrate that [the employees’] interests have been neglected.” *Id.* at 399. Here, the carpenters’ interests have been neglected because they are left without their own representatives on the shop floor and at the collective bargaining table. Similarly, this case is distinguishable from others cited by the Employer, such as *Metropolitan Opera*, 327 NLRB 740 (1999), where the Board found that during the 30 year bargaining history, there had been “ample accommodation for the choristers’ particular interests” in bargaining. This is no longer the case in the instant matter.

In *Firestone Tire & Rubber*, 223 NLRB 904, 906 (1976), the Board found that severance would not be “appropriate where employees have participated substantially in the maintenance of the existing pattern of representation.” However, the Board also looks at the collective bargaining history to determine whether the employees in the petitioned-for unit have experience at the bargaining table and “participate actively in the affairs of the intervenor.” *Beaunit Corp.*, 224 NLRB 1502 (1976), *Eaton Yale and Towne*, 191 NLRB 217, 218 (1971). Here, the Petitioner has substantially participated in the maintenance of the existing pattern of representation for forty years through representing employees in the grievance procedure and in collective bargaining. Yet, given that the MTD refuses to allow Petitioner to continue with its representation of the carpenter trades within the confines of the MTC, the only way for the Petitioner to maintain that participation in these circumstances appears to be through a severance election. As required by the Board in *Beaunit Corp.*, and *Eaton Yale and Towne*, the Petitioner has extensive experience at the bargaining table and has participated actively in the affairs of the MTC. Indeed, Petitioner’s chief steward Tardif has participated for more than 40 years at the bargaining table as a carpenter representative of the MTC in affairs of the Union.

In answer to the question, “what would serve the working [person] in [the] effort to bargain collectively with [the] employer. . .” that the Board posed in *Mallinckrodt Chemical Works* at 393, I find that, under the unique facts posed by this case, the history of collective bargaining dictates that the carpenters be entitled to a severance election, because otherwise their representation will be severely curtailed, and the MTC’s exclusion of the Petitioner will lead to industrial instability, not stability. I am in accordance with the Petitioner that stability, labor peace, and the status quo can be better

maintained by giving the carpenters their right to an election. Otherwise, the carpenters will be divided into segments, represented by other unions, and the members will lose their longstanding relationship with their union and their identity as carpenters.

## **B. Craft-Specific Training**

The Board examines the degree of training employees in a proposed craft unit have to determine if a craft unit is appropriate for separate representation. *Burns and Roe*, supra. Carpenters at the Employer's complex do not currently have a formal apprenticeship program.<sup>14</sup> This is not dispositive as to craft status. In *Burns and Roe*, the Board found that the lack of a formal apprenticeship program did not mitigate against a finding that the separate craft unit was appropriate. The Board wrote that "the fact that the [e]mployer does not have a formal apprenticeship program or conduct extensive on-the-job-training does not negate separate craft status, as the [e]mployer requires that the electrical employees at the very least have extensive experience and no other class of employee is required to have the same level of electrical knowledge." *Burns and Roe* at 1308.<sup>15 16</sup>

### **1. New Employee Training**

The Petitioner, Intervenor, and Employer differ in their assessments of how much new employee training carpenters receive. According to the Employer, the training and certification requirements for carpenters are minimal, especially when compared to other trades or job classifications. According to Petitioner, carpenters receive at least as much training as others in the shipyard.

As a preliminary matter, newly hired carpenters undergo forty hours of general training just as other new employees do. They also receive about a week of specialized training, administered by the carpenter's training instructor, Don Kniss. He reports to the Employer's training coordinator, Dona Cheff. In that first week, Kniss teaches carpenters lessons about the Employer's airborne, structure borne, or fluid borne noise control program and the basics of vibration dampening, and insulation. He provides training concerning ballast tanks. Trainees learn how to apply hull treatments on the exterior of

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<sup>14</sup> The apprenticeship program for all employees became inactive about seven years ago. Thus, the last class in the carpenters' apprenticeship program was held in 2007. Nineteen carpenters graduated from the last apprenticeship class. The apprenticeship program was a voluntary program, and not required for carpenters.

<sup>15</sup> Carpenters do not have to have any licensing or certification requirements except for carpenter dive tenders who must have a Connecticut State building certificate, CPR certificate, basic first aid, and a license to drive a boat. The other trades do not require licenses or certificates.

<sup>16</sup> The Employer claims that carpenters do not have to have any special certifications or qualifications and that carpenters are simply hired off the street through the Employer's employment office as if for a fast-food restaurant. However, the job description requires that carpenters "must be able to safely use a variety of pneumatic and electrical power tools necessary to cut[,] modify[,] and install materials." Director Alu also noted that he "would like" carpenters to have some blueprint reading capabilities and be able to work in confined spaces and heights. According to Alu, painters are the closest to the carpenters in their level of skill.

the boat and place rubber tiles on the ship. Kniss administers training about overhaul and repairs and how to prepare the boat for paint. In this initial training, the carpenters must learn how to make molds, cut angles, and fasten tiles so that the ship doesn't leak.

Carpenters also learn how to erect scaffolding, both in the exterior and the interior of the ship. Scaffolding is necessary to access all the areas of the boat, not just for carpenters; but also for the other trades, including ship fitters and machinists.

The Employer minimizes the amount of training that carpenters receive, claiming that carpenters receive only some training concerning safety requirements, signs, submarine construction, how to get on and get off a ship, what to do in case of a fire, stage building, and training with respect to radiation issues. However, the Employer also confirms that carpenters have a special training center in the shipyard - a small area in the north end of the complex with a small classroom dedicated to MIP.

The Employer also contends that other employees have more onerous training requirements. The Employer provides examples: welders must pass a welding certification test and train for twelve weeks before they begin employment and extensive electrical training is required for employees performing fiber optic work. The Employer further notes that pipefitters have one to two weeks of classroom training so that they can put piping joints together and pass an exam showing that they can do so.

## ***2. Ongoing Training***

Once employed, carpenters continue their training over the course of their career. Kniss is also the one to conduct these training sessions.

The Employer keeps various records of this training received by carpenters, including a document entitled "core carpenter training" and the more detailed "Employee Quarterly Skills Review." The Employer also maintains a "critical skills" list for the carpenters' Department 252 which shows how many employees have certain skills and what skills are required in any given week. The skills on the list include operation of the aerial mobile lift, diver, HaZWaste Coordinator, Joiner, Lead Worker, Linesmen, Sound Dampening, radiation and contamination training. The training information is maintained on the "Plateau" computer system which keeps track of which dates each employee has been trained and when each employee should be trained again. Kniss monitors the Plateau system and schedules classes on all three shifts. Kniss proctors these classes. He enters carpenters' training completion dates into the Plateau. Supervisors also enter skill attribution sheets into Plateau when new carpenters are teamed up with more experienced employees and learn new skills.

Further, the Employer presented a list of "Carpenter Competencies" with the number of employees competent in each area: ConCon carpenter (40), Deck/Bulkhead

Seal Installer (3); DMP Processor Mixhead (3), Electric Walking & Riding Stacker (1), Lead Worker (2), Linesmen (4), Aerial Mobile Lift Platform (1), Nuclear Poly Carpenter (40), Sound Damp and TLT Installation (3), SHT Tile Installation (2), Stage Building (4), Stud Welding (4) and Transfer Car (1.5). The training that would be required for these competencies undercuts the assertion that the carpenters receive little training.

Carpenters receive refresher training which can be quarterly, yearly, every two years, or more, depending on the course. For example, carpenters working with the ship coating 688 special hull treatment (SHT) require a refresher training every three years. The more training and skills that a carpenter obtains, the more overtime he or she will receive. Once a carpenter completes the first steps of training, she or he is one of three rated classes. The third class has the least skill, and the second and first class carpenters are more skilled. First class carpenters can perform a larger variety of functions as they gain more training.

There are some subjects in which all carpenters must train. Virtually every carpenter is trained in stage building. All the carpenters are trained in the ship covering method - mold in place (MIP). Kniss indicates that he trained other employees on MIP-related work on only two occasions. Kniss trained painters about one small aspect of the MIP process involving filling seams and grinding the surface to meet a schedule in the graving dock. Around eight years ago, he trained four boilermakers in the same work. In addition, some non-carpenters are trained in a tangential aspect of MIP - working with isocyanate - which is a byproduct of grinding MIP. Otherwise, MIP remains firmly in the carpenters' domain.

Carpenters train in a course on preparing surfaces for paint that is applied by the painter. They have to abrade and degloss the surface, clean it with certain solvents, and apply the glue or the adhesive with a special trowel. They train in applying tiles using the vacuum shoring system.

Significantly, besides carpenters, no other employees are trained in the critical skills to be a diver, joiner, and linesmen. No other employees are trained in staging, deck covering, upholstery, lines and measures, and thermal or acoustic sound dampening. In excess of 80% of the work performed by carpenters is work that other employees have not been trained to do.

Carpenters' training can be quite rigorous. Some carpenters train in Contamination containment (ConCon). This training allows the carpenters to enter an area that potentially contains radioactive contaminants. Such trained carpenters erect containment areas which are called glove bags or drapes, among other terms. The carpenters learn to hang a glove bag so that the next trade can slip their hands inside of it, and exit it while the radiation contamination is still contained. The ConCon-trained carpenter can also dismantle the bag in such a way so that the contamination is contained.

Carpenters can only become fully trained in ConCon when they are trained by the carpenter nuclear instructors. The training takes more than four weeks and includes a written and practical examination.<sup>17</sup>

Finally, some of the training and certification requirements for such subjects as noise control are required for all employees, not just carpenters. Common requirements for all employees also include limited overhaul and submarine repair, fall protection, lead work, safety harness training, serial lift -machine operation, and respirator training.

### ***3. On-the-Job-Training***

There are a number of jobs that a carpenter cannot perform until she or he has some on-the- job training in that area. For example, if a new carpenter is charged with the responsibility of putting up staging, that new carpenter would be assigned to work on only a small piece of staging. The Employer would not assign a more complicated installation to someone who had never done the work before.

### ***4. Analysis - Carpenters Have Extensive Training or Experience that No Other Classification of Employees Is Required to Have***

Petitioner has demonstrated that “no other class of employee is required to have the same level of . . . knowledge” of carpentry work. *Burns and Roe*, supra at 1308. Carpenters receive training as divers, joiners, and linesmen. Carpenters are trained in staging, deck covering, upholstery, thermal and acoustic sound, scaffolding, lines and measurers, and diving surfaces when other employees are not. Other employees are not trained in excess of 80% of work that carpenters perform. Not only do carpenters receive one week of specialized training at the beginning of their employment, they also continue to receive training that is marked in the Plateau system, and some carpenters are even trained in the rigorous ConCon radiation program. Recently, the Board found a separate unit comprised of asphalt paving employees was appropriate when they had training necessary to operate sensors and judge the amount of asphalt to spread. *Grace Industries*, 358 NLRB No. 62, slip op. at 6 (2012). The carpenters in the instant case have much more training than described in *Grace Industries*. Cases cited by the Employer such as *Moloney Electric Co.*, 169 NLRB 464 (1967) in which the Board rejected severance found that employees had “no high degree of skill or any special training” are not applicable. In this case, training continues throughout the carpenters’ work lives. Moreover, carpenters have “extensive experience” that is carefully tracked by their supervisors in the Plateau system. Thus, I find that the training criteria weighs towards a finding that severance is appropriate. *Burns and Roe*, supra at 1308.

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<sup>17</sup> The record is silent with respect to whether other classifications undergo ConCon training.

## ***C. Functional Integration of the Carpenters with the Excluded Employees***

### ***1. Carpenters Perform Their Own Work While Working in Close Proximity to other Employees***

In determining whether the petitioned-for Unit constitutes an appropriate craft unit, the Board looks to “whether the work [in the proposed Unit] is functionally integrated with the work of the excluded employees.” ***Burns and Roe***, at 1308. Here, the Employer emphasizes that the carpenters are part of an integrated work force because carpenters work closely alongside other trades people in the existing MTC bargaining unit. For example, carpenters adjust staging under a tarp while machinists and shipfitters set up wire installation, and a painter in the area touches up painting. In front of where the sail is, carpenters perform their work in a space near a pipefitter or machinists, and electricians who are setting switches. In addition, electricians have contact with carpenters on the ship with respect to the installation of the MIP. Once the carpenters install the MIP, the electricians work on special shielding-installation. At any given time, approximately 700 employees could be working on the interior and exterior of the ship simultaneously. Sometimes employees have to stop work because people are working too close to each other - within feet or yards of each other.

Carpenters also work closely with other employees when modules have to be affixed to the submarine. Employees run ventilation and hull insulation along the top of the modules to integrate them with the ship’s systems. This process also requires that piping containing electrical cables and ventilation run along the wall to be merged with these systems on the ship. Once the module is loaded, carpenters, pipefitters, electricians, and ventilation workers, all of whom are working in the same area, make the distinct tie-ins to the hull. Then, the painters paint the area, and carpenters install the final insulation.

The Employer also describes how carpenters and linesmen perform work relied upon by other employees. For example, employees in the steel trades rely on the linesmen to re-establish the ship’s lines and help position large structures into the proper locations. Steel workers rely upon the carpenters to remove combustible material. Steel workers put up the railway or framework for the deck tile that the carpenters install. Carpenters shoot thousands of studs all around the ship and thereby aid other employees.

The Employer has shown that the carpenter-divers can work closely with the other trades when they perform certain work. For example, the Employer recently had a ship with electric penetration in a ballast tank. Air bubbles were coming from the tank. Carpenter-divers went into the water to fix the problem with some assistance from the electricians concerning the electrical issue. When items such as a hydrophone, a sensor

or a switch fail underwater, the carpenter dives with instructions from either an electrician or machinist on what repairs are to be made.

There are also times when other trades assist the carpenters. For example, painters help carpenter-divers wash down the pontoon that supports the submarine. When employees had to fix the material peeling off the Virginia-class ships, painters, electricians, grinders, sheet metal employees and steel trade employees joined the carpenters to “fair” the material (which means smoothing the depressions and the bumps).

## ***2. Carpenters and other Trades Maintain Separate Supervision***

Carpenters generally have separate supervision from other employees. There is one foreman for every fifteen to twenty painters. There is one foreman for every fifteen to eighteen carpenters. There are approximately ten mechanical pipe and electrical workers for each of their respective foremen. There are approximately fifteen employees in the steel trades for each foreman. According to Operations Manager Castro, “in a couple of different instances” in the nuclear area, carpenters and painters have been on the same team run by a painter foreman, on both the first and second shift. In another example, a team of two to six carpenters installed special purpose shielding necessary for maintaining low levels of radiation in the confines of the submarine. The team was supervised by the steel trades’ supervisor. However, Director of Operations Manager Michael Alu acknowledged that a foreman oversaw both painters and carpenters only ten to fifteen percent of the time on the second shift and perhaps one or two percent of the time on the first shift. Thus, the painters and the carpenters generally have separate supervision.

## ***3. Carpenters Perform Their Own Work Throughout the Complex***

Intervenor asserts that the carpenters are integrated with other employees because the carpenters’ work is spread throughout the Groton complex. Carpenters’ work is centered around more than six different locations through the shipyard, from the north end to to the south end. By way of contrast, the electricians are located mostly in the north yard complex, with a satellite electrician area that is used only if there is work on the waterfront. While the evidence shows that carpenters occupy spaces throughout the complex, the evidence does not reflect that they necessarily share those spaces with other employees to such a degree that their work has become functionally integrated. For the most part, carpenters are still performing separate work from other employees in the same vicinity. According to the Employer’s operations manager Castro, carpenters spend about 34% of their time on MIP/SHT, 17% of their time on covering/upholstery, 5% on diving services, and 25% of their time on lead installation.

Linesmen are implicitly included in the carpenter classification. They perform their work in the “260 Building” which faces the waterfront. They set starting points for

other trades, such as for electricians who are pulling wire ways in the ballast tank. Linesmen run all the electronic individual sighting tools and the optical tools associated with that work. Many of the linesmen work with transfer cars, run by other carpenters, which consist of four large train wheels, about four feet long, and a hydraulic system that, when combined with other cars, have the capability of raising and lowering large pieces of weight such as submarine sections, and allow the hull to “butt” or come together. Linesmen rely on computers, photogrammetry and other new technology to perform their work. Linesmen equipment is not used by other MTC tradespeople. Linesmen also must receive nuclear training.

The six or seven carpenter-divers have their own barge, and they travel around the complex with all their dive gear on it. They also have a small work shop where they repair their dive equipment. They store their personal belongings including tanks, regulators, and buoyancy vests in the dive locker which is located near the staging complex towards the north of the complex. They are among the most skilled of the Employer’s carpenters. Divers swim around the ship to make sure that there is no debris that will damage the ship when it is set down. When divers aren’t diving, they’re performing other carpenter functions which they are trained for. They’re trained to build scaffolding. They can install the hull covering MIP. Diver-tenders, who are also in the carpenter trade, help the divers enter and exit the water, tend the air station if there is surface supplied air, and help divers take on and off their scuba gear.

Above the divers’ locker, a building known as “16j” contains an old model shop that houses three full-size wooden models of all three classes of submarine that the Groton enterprise has worked on. New engineers are still taken to view the Virginia class model which was constructed by carpenters. In front of this building, there is the classroom for Department 252-which is dedicated to carpenters.

Groups of one or two carpenters are scattered throughout the Groton complex. For example, a couple of carpenters work in the building called the G-20, performing work in the saw mill. One carpenter works in the box shop and builds boxes for crating and shipping by making yokes and wood braces, and securing the braces. That carpenter cooperates with employees from shipping and receiving.

In the same general area as the dive locker, carpenters store staging materials. It is the carpenters’ responsibility to put up and take down staging materials, which includes scaffolding. Respondent’s Safety Manual, with an effective date of August 7, 2013, limits staging materials to carpenters: “[b]uilding, repair work, altering or dismantling of staging is only to be done by a trained carpenter stage building or persons working under the supervision of a trained competent stage builder.”

There is one carpenter who keeps the staging area organized and keeps track of the material. For staging, the carpenters predominately use a scaffolding system called Excel

which resembles a large erector set made of galvanized steel. Assembly requires items such as a hammer, a torpedo level, socket wrench, open-end wrench, and other typical hand tool types of items. A drill might be used. Carpenters must inspect the scaffolding on a daily basis to make sure that it is safe for all the workers that are going to access it during the course of the day. In some cases, carpenters refer to blueprints in order to build platforms. Carpenters also build stairways when necessary.

Carpenter joiners are similar to furniture makers. They are housed in a large woodworking shop in the Employer's Building 51 North. Joiners engage in fiberglass repair on antenna masts, build ladders, saw horses and many of the shipping crates that the Employer uses, not only at the Groton complex but at Quonset Point. Joiners use machinery in their shop to create compound angles for the keel blocks that the submarine rests on. In order to do so, they must calculate the diameter of the hull, the radius of the hull, and transfer the dimensions onto the blocks. One of the most talented joiners is responsible for building the ceremonial champagne boxes given to the ship sponsors during launchings. Joiners sometimes perform their work at their shop and sometimes on top of the submarine's sail. Joiners also build mock-ups for certain applications. For example, if engineers cannot generate a useful picture of an item through a computer-aided design (CAD) program, the joiners will follow the drawing and build the mock-up. The joiners have the same cadre of hand tools that a cabinet maker would and many of them have more tools in their tool boxes than some of the machinists. The tools are not shared with other trades. There is no tool allowance for carpenters.

Carpenters also work in the sound damp shop near the pier. There, carpenters prepare sound dampening and insulation materials. The shop contains a shear machine that carpenters use to cut and punch holes in the material. Carpenters process "acoustafab seals" - an airborne noise treatment - that the carpenters install inside the boat to dampen sound. Next to that shop, in the same building, is the poly-shop where carpenters create dry neutron shielding. The poly-shop is similar to a woodworking shop, except that instead of wood, the carpenters use different types of plastic that shield the sailors from neutron radiation.

Further south, linesmen work out of an office with computers and different programs to perform their pre-calculations and prep work so that the data can be turned over to the various departments. In the corner of a small building in the middle of the Groton complex, there is a specialized ventilation system where the carpenters grind fiberglass for items such as the antenna masts and snorkels.

Carpenters work in a small workshop in the graving dock area - Station No. F5. This area contains equipment and materials, including hammers, measuring tape, and squares, such tools as are necessary for carpenters to perform work on vibration dampening and hull installation. Vibration dampening is one of the acoustical treatments that the carpenter performs throughout the ship. Carpenters put hull insulations on the

interior of the pressure hull to insulate from condensation caused by the cold sea water outside and the warmth inside.

Carpenters who work in the graving docks have their lunch room near the training center. At the very end of the south yard of the complex, saw shops, known as G20, are housed. There, carpenters cut blocks of material weighing six or seven hundred pounds into specified shapes using a massive band saw.

A carpenters' wood shop and an upholstery shop are located in a repair group called "NSF." The upholstery shop is an industrial sewing shop located in Building 51 north. Upholsterers make seat cushions, curtains, and fire protection curtains. They fabricate upholstery for living spaces, the mess desk, and for cushions. Their tools include sewing machines, scissors, and a layout table. Upholsterers make the cushions for all the seats and bunk curtains, and are also responsible for hanging the bunk curtains.

Several other types of carpenter work is performed throughout the ship. Carpenters are critical in the performance of MIP work. MIP is a hull covering that is used for the Virginia class submarines and the Seawolf class submarines. Carpenters pour material into a mold in an exterior covering on the ship. Carpenters sand the materials and make preparations for the painters to paint the MIP. "SHT" tiles are another exterior covering on the hull comprised of squares of material that carpenters glue and suction onto the ship. On the interior of the ship, carpenters apply different versions of floor covering throughout the submarines and submarine modules, such as standard kitchen tile, 12 by 12 tiles, or rolled lawn materials.

#### ***4. Analysis: The Work of Carpenters Is Not So Functionally Integrated with Other Employees So as To Preclude Severance***

In *Burns and Roe*, supra at 1308, the Board found that it was appropriate for employees to seek their own unit when the group was in a separate department, separately supervised for the majority of the time, and typically performed work in their craft. All of these factors, for the most part, are present here. Carpenters have their own department, are separately supervised the majority of the time, and perform their own work, even though they may do so in close proximity to other employees while they are working. Cases such as *Turner Industries*, 340 NLRB 428 (2007), in which the Board found one overarching unit to be appropriate, can be distinguished as all the employees in that case had common skills and frequently overlapping supervision. In addition, the existence of cooperation between employees in the instant case for example, when the carpenters adjusted the staging for the shipfitters or the carpenter-divers cooperated with the electricians, does not require a finding that the carpenters are so functionally integrated with other employees so as to preclude a severance election. In *Burns and Roe*, supra at 1308, the Board found that "[e]ven when the Employer assembles a team of employees for a particular task, electrical employees generally perform the electrical work while mechanical structural employees perform the structural and mechanical

work.” Similarly, in *MGM Mirage*, 338 NLRB 529, 533 (2002), the Board found that even carpenters who were on a “mixed crew” with plumbers, painters and engineers under common supervision still constituted a separate craft because each member of the crew performed the work associated with the traditional craft. Here, too, each different classification of employee performs their own work while working on a common project. The Employer asserts that the fact that carpenters work throughout the ship requires a finding that the carpenters are not a traditional craft. However, it is in the nature of the carpenter craft to work throughout a plant, and the Board has long held that carpenters consist of a craft under such circumstances even though “they work at jobs throughout the plant.” *International Harvester*, 103 NLRB 716, 719 (1953).

#### **D. Overlapping of Duties with the Excluded Employees and the Assignment of Work Primarily Along Craft and Jurisdictional Lines**

One of the criteria for determining whether an election for craft severance is appropriate is whether the Employer assigns work according to need rather than craft and jurisdictional lines. Closely tied to this issue is the question as to whether the work of the carpenters overlaps with other trades. *Burns and Roe*, 313 NLRB 1307, 1308 (1994). Here, the Employer assigns work largely along craft and jurisdictional lines, with some exceptions. The Employer’s director of operations, Michael Alu, acknowledged that the carpenters, along with the other unions, had their own assigned work, and these employees “perform work of the carpenters.” Further, the collective bargaining agreement’s Memorandum of Understanding number 11 (herein MOU 11) provides that it “recognizes the benefits of traditional craft jurisdictions . . . .”

##### ***1. Versatility***

The Employer and Intervenor assert that the duties of the carpenters overlap with the duties of the excluded employees through the practice of “versatility”. Versatility was introduced in the 1988 contract negotiations. MOU 11 provides that the Employer can reassign an employee to a different trade for twelve weeks per year with no change in classification or pay. For example, a pipefitter could be assigned to boilermaker work or a carpenter could be assigned to a pipefitter work, although the degree to which this occurs remains unclear in the record. MOU 11 also provides that the Employer will utilize versatility only to enhance productivity but not for the purpose of “depopulating” local unions.

Flexibility involves interchange within the same craft unit. For example, it is termed flexibility when carpenters perform the work of joiners and upholsters. There is no dispute that flexibility occurs on a frequent basis, every day. There is significant dispute in the record concerning how often the Employer invokes versatility in assigning employees across craft lines. The Employer’s director of operations, Michael Alu, testified that the Employer has utilized versatility more often in recent years, almost

every day, because of a reduction in the workforce, and that versatility allows the Employer to avoid laying off employees and/or hiring people off the street. Senior Human Resource Specialist Alger denies that the Employer notifies the Petitioner prior to utilizing carpenters in versatility situations. Petitioner's chief steward, Bob Tardif, testified that carpenters from Local 1302 have been engaged in versatility work with other trades only six to eight times in the past ten years. Tardif testified that it is not possible that the Employer uses versatility without his knowledge, as the Employer or other carpenters would inform him of this. Similarly, Petitioner's president, Michael Malone, testified that versatility seldom occurs; painters could help grinding for the MIP, but he didn't know of other examples. Malone stated that there is infrequent interchange because the Employer requires specific training for each trade's separate tasks. The Employer's operations manager for the carpenters and painters Vasco Castro responded that it was "difficult to put a sense to frequency" when asked how often versatility is used in the carpenter department.

The Employer provided some examples of the use of versatility with respect to the carpenters. Last summer, 20 to 25 carpenters were trained for one week to be used as painters offsite at Norfolk Naval Shipyard. Carpenters performed this work for 10-12 weeks. However, Human Resource Specialist Steve Alger was not sure whether these carpenters were paid the second class rate but acknowledged that if that was the case, it was not a versatility situation; rather, the employees had been laid off and rehired. With versatility, employees keep their current rate of pay.

The Employer described an assignment one or two weeks before the hearing in this matter involving carpenters working as electricians for at least a few shifts. In addition, two and a half years ago, ten to fifteen painters performed carpenter's MIP work, although only at a low level - filling and grinding the seams. Without indicating when this occurred, Manager Alu testified that he has moved forty electricians, saving some of them from being laid off and returning some that were laid off, and used them in the pipe shop, even though outside machinists work there.

In January and February 2013, machinists had carpenters on loan to assist with maintenance and modernization projects. In those projects, carpenters engaged in the disassembly and cleaning of components during the peak of the machinists' workload. The manager of operations for inside and outside machinists, Christopher Monaco, acknowledged that the duration of the work was typically incidental, lasting about 20 minutes or so. Manager of Operations for the Steel Trades Hubert Haugeto also estimated that versatility assignments involving his department and the carpenters took place only over ten to fifteen shifts per year, never for more than one shift at a time.

## ***2. Snow Removal***

Carpenters remove snow - a task not typically associated with carpenters' craft. The Employer has shown that from January 21, 2012 - February 22, 2014, carpenters spent 984 hours in snow removal when this work is typically performed by the "facilities group." Of these hours, 525.5 were worked on one day - January 16, 2013, and 169.8 hrs were worked on another - January 25, 2014. Carpenters and employees from other trades sign onto a snow shoveling volunteer list. Carpenters remove snow only from the topside of the ship, the staging, and from the pontoons and the basins - areas where they typically work.

## ***3. Job Bidding Across Craft Lines***

Employees in the shipyard can bid for jobs across classifications and trades. If there is an opening in a classification, any employee can attach his or her resume to the job posting and that employee will be considered for the position. Nineteen carpenters permanently transferred to other classifications from January 1, 2011 through March 26, 2014.<sup>18</sup> Thirteen employees (and two salaried employees) transferred to the carpenters during this same time period.

## ***4. Work of the Other Trades***

As with the carpenters, the work of other trades is clearly defined. The Employer has provided examples of some of the other work performed by the other larger trades at its complex.

### ***a. Machinists***

For the most part, the mechanical trades include "inside machinists" in Department 100 and outside machinists in Department 242. The inside machinists manufacture core product lines, including hull valves and cradles that load a weapon into the ship. The inside machinists are located in Building 1, or the inside machine shop. They spend about 99% of their time working directly on the machinery in the shop. The "outside machinists" install the major components onto the submarine, such as the main shaft that turns the propeller, torpedo tubes, mast and antennas that are affixed to the sail and other larger components that operate the ship's systems. About 90% of the outside machinists' time is spent working on submarines and they are distributed through a machine shop in the area they refer to as C-24, which is the main locker area and office room.

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<sup>18</sup> Two carpenters transferred to "MTC Multiple Locals-Including Carpenters."

### *b. The Steel Trades*

There are 359 employees in the six departments that comprise the steel trades, managed by Harold Haugeto.<sup>19</sup> The steel workers include grinders who are responsible for the preparation of the steel prior to the ship fitting. Employees in the shielding department install the special purpose plastic and other materials to minimize the radiation exposure to the sailors during the life of the ship. The steel trade workers also includes employees who perform structural welding and the preheat department that installs electrical equipment. The sheet metal department is responsible for the installation of ventilation, as well as temporary ventilation that the Employer utilizes in confined spaces. Pipewelders are responsible for the welding of all pipes, including nuclear pipes.

Interaction between the steelworkers and the carpenters shows that the carpenters' work is strictly delineated from that of the steelworkers. For example, the steel trades are generally responsible for the structural portion of the hull, and the carpenters are responsible for the nonmetallic portion. By way of illustration, carpenters are responsible for installing deck tiles while the steel trades install the steel strips that make up the walkways. The steel trade's manager of operations, Harold Haugeto, testified that "the specific carpentry tasks and the specific steel trades' tasks are happening independent each other."

Steelworkers are required to purchase certain tools. For example, the basic tool list has about 20 items, including levels and padlocks for ship fitters, as well as a list of 17 tools for sheet metal workers. These are tools that the Employer expects the mechanics to purchase and hold in their toolbox in the shipyard.

### *c. Painters*

Painters in Department 251 apply all the coatings that the carpenters do not. Painters blast and paint surfaces throughout the submarine and apply a variety of different coating systems, whether it be high solids, or the painting system Mare Island. They also apply all Teflon and Plastisol application - a protective covering used for specific applications. Unlike the carpenters, painters are required to clean up blood spills on board the ship.

### *d. Electricians*

Electricians install wire ways into submarine and the electrical equipment that runs the submarines. Electricians are in charge of lighting and fiber optics and temperature service. Electrical trades install all the cabling in a boat, in addition to

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<sup>19</sup> There are 23 supervisors and five general foremen for those six departments.

working with fiber optics. They install speaker system floats, wire the floats, cross fire control, and the ship's control panels.

When an electrician is hired, the Employer requires her or him to have about 45 personal tools on the first day of work, including such items as screw drivers and wrenches. In addition, the Employer provides about 33 more complex tools such as heat cuts and fiber optic tools.

Electricians work mainly out of two locations in the shipyard. They work in Building 38, which is the main shop in the north yard, and in Building F19, which is in the south yard. They also have a small temporary service area down in the south yard. Most of the electricians' time is spent on the deck of the submarine.

##### **5. Analysis: The Infrequent Overlap of Duties and the Employer's Assignment of Work Along Craft Lines Supports Petitioner's Position that A Severance Election is Appropriate**

In *Burns and Roe*, supra at 1309, the Board found that the fact that some non-craft workers performed craft work did not render a craft unit invalid so long as the craft employees "primarily engaged in the performance of tasks not performed by other employees." Here, the Employer has demonstrated that there have been some instances of assigning work across craft lines, pursuant to the contractual versatility provision; however, the evidence shows that the Employer does so only on a limited basis, sometimes for minutes or the occasional shift and not more than a few dozen times a year in certain departments. Such sporadic assignments do not undermine the essential nature of the carpenters' work, nor does such a limited assignment as snow shoveling in an area where a carpenter performs her work. As in *Burns and Roe*, in this case the "evidence regarding crossover work is not sufficient to negate the separate identity" of the carpenters because of its limited nature. The Board allows that "some crossover between employees of different crafts is permissible." Id. (citing *E.I. Dupont*, supra.) In fact, the Board has found that other employees performing pipefitter work did not render a separate unit of pipefitters inappropriate because the other employees spent less than half of their time performing less skilled pipefitter jobs. *Hychen Constructors, Inc.*, 169 NLRB 274, 276-277 (1968). The evidence in this case indicates that other employees perform substantially less than half of their time performing carpenter work. Thus, the occasional crossover of carpenters to the machinists, or the carpenters punching studs is not sufficient, considering the carpenters' training and separate supervision, to alter its essential character.

This case can also be distinguished from *General Foods*, 166 NLRB 1032, 1033, cited by the Employer, in which maintenance employees spent 60 - 70 percent of their time performing assignments in production, and certain maintenance operations were performed by the different classifications at different times on a routine basis. In that

case, the Board found that severance was inappropriate. Here, there is no evidence that carpenters are working in other crafts for such a substantial period of time. The evidence shows that the painters, steel trades, electricians, and mechanical trades are also highly specialized with respect to their training and tasks. In addition, there are relatively few instances of transfers between any of the trades – especially considering the size of the bargaining unit: only 32 occurrences from 2011- 2014. See *MGM Mirage*, 338 NLRB 529, 533(2002) (13 transfers in a unit of 18 carpenters over a 7 year period is deemed “insignificant.”) For these reasons, I find that that the Employer assigns work along craft lines with little overlap between the duties of the carpenters and other trades.

## **E. Common Interests Shared with Other Employees and Distinctions Between Crafts**

### ***1. Wages and Benefits***

The Board also looks to whether employees share wages, benefits, cross training, and other benefit packages to determine whether a severance election would be appropriate. *Burns and Roe*, supra, at 1309. Here, many provisions of the contract, including time off provisions, seniority and layoff, health insurance, grievance procedures, hours of work, discipline procedures and overtime provisions are the same for all classifications and each local union, including carpenters. There are no separate work rules for different trades.

However, other critical provisions differ. For example employees earn different wages depending upon which classification and trade they work in. Laborers earn \$15.94/hour while the highest paid carpenters - the joiners - earn \$27.41. The highest paid transportation workers earn more than \$30. The first class carpenter wage rate is consistent with the first class rate of almost all other classifications and a few dollars above statewide and area median rates.

There are also memoranda in the collective bargaining agreement exclusively concerning carpenters. For example, one memorandum provides for the consolidation of titles for carpenters, carpenter-shipper, and maintenance carpenters. Another memo provides for special pay for carpenter-divers, and special pay - a few extra cents - for carpenters working with lead.

Each classification within each department also maintains its own separate seniority list which governs matters such as overtime. Petitioner president Michael Malone polices overtime. He examines each weekly overtime list to make sure people are either charged the correct amount of hours or to see whether they are charged too many hours. There is also “yard seniority” which is the date the employee started at the Employer’s complex. Yard seniority governs layoff, vacation time, sick time and recall.

## **2. Tools**

Carpenters do not share hand tools with other trades. Carpenters are required to obtain 22 different hand tools, associated with the carpenter craft, such as claw hammers, wrecking bars, framing squares, hack saws and hand saws, and utility knives. Carpentry tools that have become contaminated with MIP are kept carefully segregated, and only the carpenters use them. In general, carpenters do not share their tools with other trades. Carpenters do not receive a tool allowance, whereas some of the other trades receive a nominal tool allowance.

## **3. Hard Hats and Restrooms**

The restrooms and the breaks are shared between trades, as is the cafeteria.

Carpenters wear yellow hard hats. Machinists wear green hard hats. Ship fitters wear tan hard hats. The grinders and lead bonders wear hats of an orange-reddish color. Electricians' hard hats are red. Other departments wear dark blue and silver hard hats.

## **4. Analysis: Carpenters Share Some Attributes with Other Employees, but Not All**

The Board has found that a distinction in the amount of wages paid to employees supports a finding that a separate unit is appropriate. *Grace Industries*, 358 NLRB No. 62, slip op. at 6 (2012). In that case, the Board noted that two classifications of employees had “distinct interests in wages and working conditions paid at a higher rate than laborers.” The same is true here. In addition, the carpenters have distinct interests with respect to overtime, tools, and attire. In *MGM Mirage*, supra at 533, the Board found that the difference in uniforms was significant in showing craft distinctions. The common attributes between the trades in the provisions of the collective bargaining agreement are not sufficient to overcome the differences. As the Board noted in *Burns and Roe*, supra at 1309,

We are not unmindful that there are some factors favoring finding only a combined unit appropriate, e.g., some contact and overlap of job functions, and that all employees are subject to common personnel policies and receive similar wages and benefits. However, a petitioned-for unit need only be an appropriate unit. Further, the Employer has not shown that the lines of separate craft identity have been so blurred as to preclude a separate . . . unit.

While the Employer asserts that the common collective bargaining provisions and shared restrooms and break rooms require a finding that the carpenters have “blurred” into the MTC as a whole, the evidence shows significant differences with respect to

wages, working conditions, attire, tools, training, organization, and supervision that distinguish them from the other crafts. I find that these differences supports a finding that a severance election is appropriate.

## **F. The Pattern of Collective Bargaining in the Industry**

The Board looks to the practice in the industry or area to determine whether separate units are appropriate. In *Mallinckrodt*, the Board noted the importance of the “history and pattern of collective bargaining in the industry involved.” Id. at 397. See also *MGM Mirage*, 338 NLRB 529, 534 (2002) (area practice supported a separate carpenter unit when petitioner represented carpenters in separate craft units in 22 hotels across the city).

The Employer and the Intervenor set forth that it has been the practice since before World War II to have one umbrella organization at naval facilities in order to facilitate that war effort and foster labor peace. Petitioner asserts that the ship and submarine building industry is replete with examples of organizations such as the Metal Trades Council bargaining units coexisting with the separate bargaining units of other trades.

### ***1. Examples of Employers Which Have Separate Collective Bargaining Agreements with Carpenters or Other Crafts.***

There are several examples of separate units for distinct crafts in maritime facilities. For example, the Employer owns a complex in Hawaii. There is a separate bargaining unit for electricians at that complex, while there are no other unions on the property at that location. Carpenters have a separate bargaining agreement with the State of Washington for its ferry system while they previously were included in the Puget Sound MTC which represented all the crafts at that complex.<sup>20</sup> The Puget Sound MTC continues to have a separate collective bargaining agreement with the State of Washington for employees who are not carpenters.<sup>21 22</sup> Cascade General, Inc. has collective bargaining agreements with the MTD, the Pacific Coast MTC, and the MTC of Portland, in addition to a separate collective bargaining agreement with the Pacific Northwest Regional Council of Carpenters. The work at Cascade includes naval work-

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<sup>20</sup> The collective bargaining agreement between the State of Washington and Pacific NW Regional Council of Carpenters is effective July 1, 2013 through June 30, 2015. The collective bargaining agreement between the State of Washington and the Puget Sound Metal Trades Council was effective from July 1, 2011 through June 30, 2013.

<sup>21</sup> The Intervenor emphasizes that the work in the instant matter - submarine building - is different than running a ferry system.

<sup>22</sup> Intervenor asserts that it appears that there were separate certifications in the Puget Sound contract, so craft severance was not involved when the Carpenters signed its own collective bargaining agreement with the employer.

maintenance work on surface craft such as air craft carriers and battleships - specifically surface graft.<sup>23</sup>

The Pacific Northwest Regional Council of Carpenters also has a separate collective bargaining agreement with Lake Union Drydock Company at the same time that employer also has a contract with the Pacific Coast MTD for the other employees. An agreement between Martinac Shipbuilding Corporation and the Puget Sound MTC with an expiration date of November 1, 2011, covers all production, repair and maintenance employees in connection with ship construction and repair. That employer subsequently reached a separate agreement between Martinac Shipbuilding and Pacific Northwest Regional Council of Carpenters which is to terminate on November 1, 2014.

There is an agreement between Huntington Ingalls Incorporated and the MTD of the AFL-CIO represented by its affiliate, the Pascagoula MTC with effective dates of March 12, 2012 to March 8, 2015 for production and maintenance employees. The agreement specifically excludes electrical workers.

The Fishing Vessel Owners and Marine Ways, Inc. have a collective bargaining agreement with Pacific Coast MTD and the Puget Sound MTC which expired on July 1, 2012. This agreement covers all production, repair and maintenance employees. A subsequent agreement was enacted between the employer and the Pacific Northwest Regional Council of Carpenters with the effective date of July 1, 2012.

Finally, there is an agreement between the Pacific Fisherman Shipyard and Electric and the Pacific Coast MTD and the Puget Sound MTC which expired July 1, 2013, for all production, repair and maintenance employees. There is now a separate agreement between the same employer and the Pacific Northwest Regional Council of Carpenters set to terminate on July 1, 2016.

## ***2. Examples of Employers with Single, Broad Production and Maintenance Units.***

There several examples of single production and maintenance units in maritime units. There is a contract between Bath Ironworkers and the Machinists Union District 4 and its Local S6. Included in the bargaining unit are a number of classifications, including carpenters. The employees in the bargaining unit pay dues to the International Association of Machinists, the local union that's specified in the contract. The work is comparable to the work being done in the instant matter.

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<sup>23</sup> According to the *International Union of Pure and Applied Chemistry Gold Book* (goldbook.iupac.org), this is a process in which a polymer surface is chemically modified by grafting or by the generation of active sites that can lead to the initiation of a graft polymerization.

In Norfolk, at a federal shipyard, the Federal Employee MTC is the representative of the unit for all the employees. The individual trade unions are not separately recognized by the Employer. The collective bargaining agreement between Portsmouth Naval Shipyard and Portsmouth Federal Employees MTC includes all wage grade employees or production employees including machinists, carpenters, and boilermakers.<sup>24</sup> In another example, Northrup Grumman Ship System had a contract with the Metal Trades Department and the New Orleans Metal Trades Council but not a separate agreement for the carpenters or other trades.

### ***3. Analysis: Pattern in the Industry***

The evidence in the record demonstrates that separate carpenter or other craft units at maritime facilities do exist. The Employer asserts that the examples provided by the Petitioner are flawed in that they do not constitute facilities where submarines are fabricated. For example, the ferry system in the State of Washington can be distinguished from the Groton complex in the instant matter. However, many of the crafts involved and the type of work performed on the water is similar. Nevertheless, the Employer has also provided examples of broader units, in Norfolk for example, that are more closely related to the work performed at the Employer's Groton complex. Neither party has been able to establish a pattern in the industry; thus, I find that Petitioner has not carried its burden with respect to this criterium.

## **CONCLUSIONS AND FINDINGS**

Based on the foregoing discussion and on the entire record,<sup>25</sup> I find and conclude as follows:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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<sup>24</sup> The signature page for this collective bargaining agreement is not included with the exhibit.

<sup>25</sup> The parties timely filed briefs, which were carefully considered.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time carpenters, checkers, radiographic lineman, maintenance carpenters, carpenter-divers, joiners, joiner-model, and joiner upholsters employed by the Employer in the bargaining unit certified in NLRB Case 01-RC-02373 and 01-AC-59; but excluding all other production employees and maintenance employees, all clerical employees, fire fighters, clericals in the security function, employees represented by the Marine Draftsmen Association, employees represented by the Pattern Makers Association, and all other employees, and guards and supervisors as defined in the Act.

Dated at Detroit, Michigan, this 26<sup>th</sup> day of June 2014.

/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

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **United Brotherhood of Carpenters and Joiners of America, Local 1302**. If a majority cast valid ballots for “yes”, they will be taken to have indicated their desire to constitute a separate bargaining unit and a certification of representative will be issued with respect to such unit. If not, these employees shall remain a part of the existing unit and a certification of results of election to such effect will be issued.

The date, time and place of the election will be specified in the notice of election that the Board’s Regional Office will issue subsequent to this Decision.

### **A. 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. 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 **July 3, 2014**. 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's website, [www.nlr.gov](http://www.nlr.gov),<sup>26</sup> 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 three copies of the list, unless the list is submitted by facsimile or e-mail or electronically filed, 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

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<sup>26</sup> To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://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.

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).]

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 **July 10, 2014**. The request may be filed electronically through the Agency's website, **www.nlr.gov**,<sup>27</sup> but may **not** be filed by facsimile.

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<sup>27</sup> 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.