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

ARCHITECTURAL CONTRACTORS TRADE ASSOCIATION[1] [2] **Case 07-RC-125595**

Employer ACTA

and

REICHENBACH CEILING & PARTITION CO.[3] **Case 07-RC-125615**

Employer Reichenbach

and

LOCAL 2, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, AFL-CIO[4]

Petitioner

and

LOCAL 514, OPERATIVE PLASTERERS'AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO[5]

Intervenor Local 514

and

LOCAL 886, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO[6]

Intervenor Local 886

and

OPERATIVE PLASTERERS'AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO[7]

Intervenor International Plasterers

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[1] The name of Employer ACTA appears as amended at the hearing.
[2] These cases were consolidated for hearing on June 9, 2014 by an Order Consolidating Cases.
[3] The name of Employer Reichenbach appears as amended at the hearing.
[4] The name of the Petitioner appears as amended at the hearing.
[5] The name of the Intervenor Local 514 appears as amended at the hearing.
[6] The name of the Intervenor Local 886 appears as amended at the hearing.
[7] The name of the Intervenor International Plasterers appears as amended at the hearing.

APPEARANCES[8]

David Lawrence, Attorney, of Farmington Hills, Michigan, for the Employer Architectural Contractors Trade Association.
John Adam, Attorney, of Royal Oak, Michigan, for the Petitioner.
Robert Fetter, Attorney, of Detroit, Michigan, for Intervenors Local 514, Local 886, and International Plasterers.

DECISION AND DIRECTION OF ELECTIONS AND ORDER SEVERING

Employer ACTA (or ACTA) is a trade association that represents commercial contractors in the architectural trades in southeast Michigan.[9] Petitioner seeks an election in a unit consisting of all plasterers working for plasterer contractors bound to the collective bargaining agreement between ACTA and Intervenor Local 514.[10]

Employer ACTA objects to holding an election pursuant to the petition. ACTA contends that: 1) it is not an "Employer" in this proceeding; 2) the petitioned for unit is inappropriate because it contains no geographic limit; 2) the power of attorney forms signed by ACTA's employer-members are limited in scope to bargaining with Intervenor Local 514; and 4) an election in the proposed unit is inappropriate because ACTA has no history of bargaining with the Petitioner.

Intervenor Local 514 also contends that the scope of the power of attorney the employer-members granted to Employer ACTA is limited to bargaining with Intervenor Local 514. As a result, Petitioner must file petitions for each individual employer in order to represent their employees. Additionally, Intervenor Local 514 asserts that the petitioned for unit is inappropriate because it contains no geographic limit.

Intervenor Local 886 asserts that there is a contract bar with respect to the three counties of Michigan that border on Ohio. This contention is based on the signatures of two employer-members, Saylor's, Inc. (Saylor's), and Acoustic Ceilings and Partitions Co., Inc. (Acoustic Ceilings), on "certifications" which bind them to another multi-employer unit which has a collective bargaining agreement with Intervenor Local 886.

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[8] David Jerome, Attorney, of Northville Michigan, represented Employer Russell Plastering Company in Case 07-RC-125632 at hearing. On June 26, 2014, I issued an order severing Case 07-RC-125632 from the instant proceeding and approved a stipulated election agreement executed by Petitioner, Intervenor Local 514 and Employer Russell Plastering.

[9] Post hearing, in its brief, Intervenor Local 514 withdrew its opposition to proceeding to an election in Reichenbach Ceiling & Partition Co., Case 07-RC-125615. That is the only petition in which the International Plasterers and Local 886 intervened. The direction of election for Employer Reichenbach is addressed below.

[10] On the first day of hearing, the hearing officer reviewed and granted the Intervenors' motions to intervene, as indicated on the case captions herein, and I affirm.

Petitioner argues that Employer ACTA and the Intervenors seek to circumvent the certification that the Board previously granted with respect to Employer ACTA. Petitioner maintains that a finding that it cannot have an election in this Unit would be inconsistent with the decision rendered by the Board eight years ago and contrary to Board law. Petitioner also characterizes the argument that there may be a contract bar with some individual contractors, i.e. Saylor's and Acoustic Ceiling, as a "red herring" because the contract purported to serve as a bar is not with ACTA. With respect to the argument that the unit is not appropriate because there are no geographic limitations, Petitioner asserts that the Board has ruled that the geographical limits on the units are not appropriate.[11]

Based on the record evidence and the law, I find that: 1) ACTA is an employer under the Act; 2) the unit previously certified by the Board is appropriate because the employer-members of ACTA have the requisite intent and history to continue multi-employer collective bargaining; 3) there is no contract bar with respect to Acoustic Ceiling and Saylor's; 4) the powers of attorney signed by ACTA's employer-members do not limit ACTA's authority to bargaining with Intervenor Local 514, but explicitly allow for bargaining with any union when "necessary," which would include Petitioner; and 5) there is no evidence establishing that the scope of the previously certified Unit is inappropriate.

I. Overview

Employer ACTA, with 38 employer-members[12] bound to it through power of attorney documents, has entered into collective bargaining agreements with five different unions: Michigan Regional Council of Carpenters; the Resilient Floorers, Local 1045; Cement Masons, Local 514 (herein Intervenor Local 514); Laborers Locals 1076, 1191, negotiated 499 [sic]; and the Tapers or District Council 1M [sic].[13] Each employer-member chooses to be represented by Employer ACTA with respect to one or more of these unions.

ACTA's collective bargaining agreements primarily concern work located in and around southeastern Michigan. None of ACTA's agreements describe work that extends outside of the state of Michigan. Employees of ACTA's employer-members generally work within the metropolitan Detroit area. ACTA does not currently have a collective bargaining agreement with Petitioner.

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[11] Petitioner has agreed, however, to proceed to an election in a unit with geographic boundaries, if necessary.

[12] A list of plastering contractors was included with the petition: Acoustic Ceiling & Partition Co., Inc.; ANM Construction Company, Inc.; Ann Arbor Ceiling & Partition, LLC; Brinker Team Construction Co.; City Renovation & Trim, Inc.; Denn-Co Construction; Diversified Construction Specialists, Inc.; Giraud Company; Harnish Acoustical, Inc., William E [sic]; Jasman Construction, Inc.; Jimenez Construction; Oakland Building Materials; Pontiac Ceiling & Partition Co, LLC; Redford Construction Group LTD; Reichenbach Ceiling & Partition, Inc., a/k/a Reichenbach Plastering Company; Russell Plastering Company; Saylor's Inc.; SHR-H, LLC (Spectrum HR); and Troy Metal Concepts, Inc. The Employer's executive director, Donna Pardonnet, testified that Jasman Construction, Inc. and Denn-Co Construction had revoked their power of attorney. She also testified that Giraud Company, SHR/Spectrum, Troy Metal Concepts and Jiminez construction went out of business while Pollock Plastering was an ACTA contractor whose name was not on Petitioner's list.

[13] The names of the unions set forth herein appear as in the record, and appear to be their commonly used names. Tapers include painters.

The geographic jurisdiction set out in the collective bargaining agreement between Intervenor Local 514 and ACTA consists of the Michigan counties of Wayne, Oakland, Lapeer, Macomb, St. Clair, Washtenaw, Sanilac, and Livingston, excluding the Lenawee Townships of Conway, Cohoctah, Deerfeld, Handy, Hartland, Osceoloa, Tyrone, Howell and the city of Howell. Their three-year collective bargaining agreement was entered into on June 1, 2011, expired May 31, 2014, and had been extended for a month at the time of the hearing. The parties to the collective bargaining agreement have a Section 9(a) relationship, initially through voluntary recognition, [14] and subsequently through an election. Local 514's collective bargaining agreement with ACTA includes a lengthy description of the scope of the work covered.[15]

On November 1, 2012, Local 514 absorbed two other plasterer locals as part of the merger of the three plasterer locals within the state of Michigan: Locals 16 and 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO (Plasterers' Local 16 and Plasterers' Local 67). Local 514 now operates as the one unified local in the State with jurisdiction over all of Michigan except for three counties along the Ohio border - Hillsdale, Lenawee and Monroe.

Local 514 is a party to three other plasterer agreements with employer associations in the state covering the areas of Lansing/Jackson, Flint and Saginaw, and Kalamazoo/Battle Creek. The plasterer agreement with the Lansing Jackson Area Contractors expired May 31, 2014 and was then extended until May 2017. The agreement between Local 514 and the Flint Area Contractors expired May 31, 2014. The agreement between Local 514 and the Southwest Michigan Area Plastering Contractors is set to expire in 2017. (There is no signature page for

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[14] As found in ***Architectural Contractors Trade Associations***, 343 NLRB 259, 259 259, fn. 2 (2004), Plasterer's Local 16 and the Employer were parties to an 8(f) agreement effective from June 1, 1997 through May 31, 1999. In 2000, the parties entered into a successor agreement, effective from August 1, 2000 through May 31, 2003, and changed their relationship from one governed by Section 8(f) to one governed by Section 9(a).

[15] Article IX, Section 2 of the collective bargaining agreement provides that plasterers' jurisdiction [includes] . . .

> All interior and exterior plastering on cement, stucco, stone imitation or any patent material when cast, the setting of same. This includes the plastering and finishing with hot composition materials in vats, compartments or wherever applied; also taping and pointing of all joints, nail holes and bruises on wallboard, regardless of the type of materials or tools used; also the setting in place of plasterboard, ground blocks, patent dots, cork plates, brownstone, and acoustical tile including temporary nailing, cutting and fitting in connection with the sticking of same; also grouting of door frames, application of Intumescent Fireproofing, all fireproof patching. With the exception of tapered edge (ready to tape) pieces, and pieces mechanically fastened over drywall not be plastered, all applications of ornamental plaster, including touchup after installation is the work of the Plasterers. All acoustical blocks when stuck with any plastic materials, regardless of thickness constitute a work assignment. Also, the sticking, nailing and tile shall be done by the plasterers, allowing sufficient thickness to allow the applying of the terrazzo or tile and the application of any plastic material to the same must be done by practical plasterers.

In addition casting and waterproofing work, application of cementitious materials, exterior insulation application, and preparation work of walls and ceiling to receive plaster and plaster systems is covered under the collective bargaining agreement.

the latter agreement in the record.) The main differences between the agreements are wage rates and fringe benefits.[16]

The petitioned-for Unit was previously considered by the Board in ***Architectural Contractors Trade Association***, 343 NLRB 259 (2004), wherein Intervenor Local 514's predecessor, Plasterers' Local 67, sought a multi-employer unit within ACTA. The Board overruled the then Regional Director's decision that single-employer units were appropriate, rather than the one multi-employer unit sought in Case 07-RC-022466.[17]

The Board found that the power of attorney forms that had been executed by the individual employers binding them to ACTA and ACTA's 2000 collective bargaining agreement with the Plasterers' Local 67 was evidence of the requisite "unequivocal intent" of the individual employer-members of the Employer to be bound by group action. Id. The Board further found that collective intent was demonstrated by the individual contractors' delegation of authority to representatives to sit on bargaining committees to negotiate a collective bargaining agreement. This evidence was found sufficient to overcome the single–employer presumption. Upon remand and a subsequent post-election hearing, the Board certified that Local 67 was the exclusive representative of employees in the following appropriate unit:

> All journeymen and apprentice plasterers in the employment of constituent members of the Employer association but excluding guards and supervisors as defined in the Act.[18]

II. Board Law and Its Application to This Case

A. ACTA Is the Employer in This Proceeding

As a preliminary matter, ACTA is the Employer in this case. ACTA objects to being categorized as the "Employer." ACTA established that it has only one part time staff member, other than the executive director, and does not employ any people involved in any of the trades. It is true that ACTA performs no plastering work, bricklaying, or cement masonry work. However, the Board has previously found that it is appropriate to find a multi-employer association, indeed, this very multi-employer association, to constitute an "Employer" under the Act. ***Architectural Trade Associations***, supra. See also ***Casale Industries***, 311 NLRB 951, 953 (1993). Thus, I find that ACTA is appropriately the "Employer" in this proceeding.

[16] Intervenors do not assert that the collective bargaining agreements that cover these three other areas in Michigan serve as contract bars to the petition herein, although they do assert that these areas should be carved out of the ACTA unit sought herein.

[17] Local 9, International Union of Bricklayers and Allied Craftworkers, AFL-CIO, was an Intervenor.

[18] At the hearing, Petitioner agreed "that the election can have the same exact wording that we did last time: all journeymen and apprentice plasterers in the employment of constituent members" of the ACTA.

B. The Petitioned-for Unit is Appropriate Because Employer ACTA has the Requisite Intent and History of Multi-employer Bargaining

Citing ***Dezcon*****,** 295 NLRB 109 (1989) and ***P.J. Dick Contracting***, 290 NLRB 150 (1988), Intervenors claim that the proper test to determine the appropriateness of this unit is one based on community of interest, including the similarity of skills, duties, and working conditions of employees; central control of labor relations and supervision; and interchange and/or transfers of employees among construction sites; however, the appropriate test is more limited. In ***Donaldson Traditional Interiors***, 345 NLRB 1298, 1299 (2005), citing ***Weyerhauser Co.,*** 166 NLRB 299 (1967), 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. ***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 in and be bound by the results of group bargaining."); see also ***Centra***, 328 NLRB 407, 408 (1999).

Employer ACTA and the Intervenors assert that the proposed Unit is not appropriate because, while the employer-members of Employer ACTA may have a history and intent to bargain on a multi-employer basis, they do not share that history with the Petitioner. Employer ACTA distinguishes this petition from the one before the Board in 2005, Case 07-RC-022466, by noting that then ACTA had a 9(a) collective bargaining agreement with Local 67 - the predecessor of Intervenor Local 514. Employer ACTA asserts that there was a history of bargaining therein, whereas there is no such history with Petitioner.

However, in ***Architectural Contractors Trade Association,*** supra, the Board did not rule that employer-members' willingness to negotiate on a multi-employer basis had to be limited to one union in order to find a multi-employer unit to be appropriate. Rather, the Board held that:

> A multi-employer bargaining unit is appropriate where 'the employers involved have evidenced a clear intent to participate in multi-employer bargaining and to be bound by the actions of the bargaining agent. ***Hunts Point Recycling Corp.***, 301 NLRB 751, 752 (1991)' . . . . [T]he Board requires evidence of an unequivocal intent to be bound by group action manifested by either participation in the group bargaining or delegation of authority to another to engage in such bargaining.[19]

[19] On the same day it issued ***Architectural Contractors and Trade Association***, the Board released a companion decision, ***Arbor Construction Personnel***, 343 NLRB 257 (2004), in which the Board found that a single employer

Nothing in this language forecloses another union from seeking to represent employees in the ACTA unit. The Board requires that the employer-members show an intent to be bound by group action, but does not specify that it must always be with the same union.

Moreover, the Board has specifically acknowledged that a multi-employer unit can be appropriate, even if a rival union seeks to represent the employees of employer-members. In ***Evening News Association***, 154 NLRB 1494, 1496 (1965), the Board held that:

> [t]he Board does not find a multi employer unit appropriate except where all parties clearly agree to such a unit or where there has been a history of bargaining on a multi-employer basis, and the employers and either the incumbent or a **rival union** desire to continue bargaining on such a basis. (emphasis added)

Finally, Intervenors assert that only single employer units are appropriate and cite ***NLRB v. Sklar***, 316 F.2d 145, 150 (6th Cir. 1963), for the proposition that an employer should be able to withdraw from a multi-employer unit in light of a rival union. However, the instant matter concerns whether the petitioned-for unit is appropriate while ***NLRB v. Sklar*** concerned whether an individual employer properly withdrew from the multi-employer unit.[20]

Here, ACTA employer-members have demonstrated their intention to be bound in collective bargaining by group action. Three employer-members negotiated on behalf of the others. These three members of the bargaining committee volunteered and were then approved by ACTA's board. In addition, the employer-members accept the collective bargaining agreement arrived at by the bargaining committee. The employer-members have manifested their intent to be bound by group action, and have a history of delegating their authority to ACTA to participate in group bargaining. This has not changed, or does not change, simply because another union seeks to represent ACTA employees.

C. There is No Contract Bar Preventing the Election with Saylor's and Acoustic Ceiling

When a petition for an election is filed for a unit of employees covered by a collective bargaining agreement, the Board must decide whether the asserted contract exists in fact, and whether it constitutes a bar to the election. The contract bar doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of free choice in the selection or change of a bargaining representative. ***Direct Press Modern Litho, Inc.***, 328 NLRB 860 (1999), citing ***Appalachian Shale Products Co.***, 121 NLRB 1160,1161 (1958). The doctrine is Board created, not imposed by the Act or judicial case law, and the Board has considerable discretion to formulate and apply its rules. ***Bob's Big Boy Family Restaurants v. NLRB***, 625 F.2d 850, 851, 853-854 (9th Cir. 1980). A contract can bar a representation election

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unit petitioned for by Bricklayers Local 9 was invalid because the parties created and maintained a multi-employer unit and showed the requisite intent to be bound by group actions.

[20] The asserted withdrawal of Denn-Co Construction and Jasman Construction from ACTA is not at issue in this proceeding which concerns the appropriateness of the petitioned-for Unit.

if it conforms to certain requirements. These basic requirements include that the contract be written, signed, and contain substantial terms and conditions of employment. ***Young Women's Christian Assoc. of Western Mass.,*** 349 NLRB 762, 766 (2007). The party asserting a contract bar bears the burden of proof. ***Road & Rail Services, Inc.,*** 344 NLRB 388, 389 (2005).

Intervenor Local 886 contends that there is a contract bar preventing an election in the proposed unit. Saylor's is an ACTA employer-member which also, on April 17, 1998, signed a "certification" that it would be bound to the collective bargaining agreement between Local 886 of the OPCMIA and the Toledo Area Carpenter Employer's Association. The latter is a division within the multi-employer Associated General Contractors of Ohio (AGC) that negotiates concerning wall and ceiling work. Saylor's performed work in Ohio and outside the Detroit metropolitan area. Acoustic Ceiling signed the same "certification" on December 1, 2001. Neither employer signed another such certification after the 2005 ACTA decision. Neither employer had granted the Employer ACTA the authority to bargain with Local 886.

Intervenor Local 886 states that these employers remain bound to the collective bargaining agreement between the Associated General Contractors of Northwest Ohio, Labor Relations Division and Local 886 which is in effect from July 1, 2013, through June 30, 2016, and includes Hillsdale, Lenawee and Monroe counties in Michigan. In that collective bargaining agreement, Article III "Union Recognition and Scope" provides that:

> Each [e]mployer, in response to the Union's claim that it represents an uncoerced majority of each Employer's employees, acknowledges and agrees that there is no good faith doubt that the Union has been authorized to, and in fact does, represent a majority of employees.

In ***Staunton Fuel & Material, Inc.***, 335 NLRB 717 (2001), the Board identified the minimum requirements in a written recognition agreement that would allow a union to be recognized as a 9(a) representative without looking to extrinsic evidence. The Board specifically held that "a written agreement will establish a 9(a) relationship if its language unequivocally indicates that the union requested recognition as majority representative, the employer recognized the union as majority representative, and the employer's recognition was based on the union's having shown or having offered to show, an evidentiary basis of its majority support."

Here, the language in Article III does not comport with the requirements of ***Staunton Fuel & Material*** in that the collective bargaining agreement does not state that each employer's recognition was based on the union's having shown or having offered to show, an evidentiary basis of its majority support. At the hearing, evidence was adduced from the Plasterers International President and former Local 886 business manager Daniel Rauch as to what type of relationship existed between the AGC and Local 886. Rauch testified, in a conclusory fashion, that it was a 9(a) relationship through voluntary recognition. However, Rauch did not testify, the contract does not indicate, and there is no evidence in the record to establish that Local 886 showed, or offered to show, "an evidentiary basis of its majority support" from employees of the two employers.

The Board has required that there must be evidence that a majority of employees of any individual employer support a union in order to establish a relationship under Sec. 9(a) of the Act. In ***Comtel***, 305 NLRB 287, 291 (1991), the Board held,

> if a labor organization desires to achieve status as a 9(a) representative of employees of employers in a construction industry multi-employer association—and therefore eliminate the potential for 8(f) proviso elections that would test its majority during a contract's term—it must have the manifest support of a majority of the employees of any individual employer whose employees it seeks to merge into the unit under a 9(a) agreement. . . . . [As such evidence was lacking], [t]he agreement therefore did not constitute a bar to the election.

Without the requisite showing of majority support, Saylor's and Acoustic Ceiling have nothing more than a Section 8(f) relationship with Local 886. An 8(f) contract does not operate to bar a petition filed anytime during its term. ***VFLTechnology***, 329 NLRB 458 fn. 8 (1999). Thus, the contract cannot serve as a bar to these employees or the employees of any other ACTA employer-members from voting. Moreover, Saylor's and Acoustic Ceiling have not "unequivocally manifest[ed]" their intention to be bound by the AGC contract, rather than continuing their history of bargaining with ACTA. After all, the two employers signed the certifications long before the Board certified the ACTA unit as a 9(a) representative in 2005, and there is no evidence in the record of subsequent conduct on the part of two employers to show that they are bound to the AGC contract. ***John J. Corbett Press Corp.***, 172 NLRB 1124, 1125 (1968).

Finally, the AGC contract restricts its boundaries to only three counties in Michigan: Hillsdale, Lenawee and Monroe. Such geographic limitations placed on the unit mitigates a finding of contract bar. See e.g., ***Central Truck Lines***, 98 NLRB 374, 375 (1952) (contracts that depart substantially from a certified unit are not a bar to an election); See also, ***Alley Drywall, Inc.,*** 333 NLRB 1005, 1007, (2001) (Board rejected the use of 8(f) bargaining history to limit the geographical coverage of a petitioned-for unit.)

For these reasons, I find that the AGC contract does not serve as a bar to an election in the petitioned-for unit.

D. The Unit is Appropriate Without a Geographic Limit

Both the Employer and Intervenors assert that the proposed Unit is inappropriate because the unit description does not contain any geographic limit. At hearing Employer ACTA claimed that without a geographic limit, the Unit will run afoul of various and numerous collective bargaining relationships. Although ACTA also agreed to "stipulate to the same unit as was the case in the 2005 case with the Plasterers, which means with the geographic limitation and with the specific scope of craft[,]" the unit in 2005 did not contain any geographic limitation or define the specific scope of craft.

First, the Board did not include geographic limits in its previous decision with respect to this Unit. ***Architectural Contractors and Trade Association***, supra. In ***Alley Drywall***, supra at 1006, the Board noted that its certification of units is not often to be changed:

> [t]he selection of an appropriate bargaining unit lies largely within the discretion of the Board whose decision, if not final, is rarely to be disturbed.

Second, the Board has ruled that it prefers units without geographic limitations. In ***Premier Plastering, Inc***., 342 NLRB 1072, 1073 (2004), the Board agreed "with the [i]ntervenor's first proposition that the only appropriate unit would normally include all of the employer'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***, supra at 1008) The Board only exempted a geographic portion of the unit in that case because of an existing 9(a) relationship with the employer, which I have not found here. Similarly, in a case involving the same unit as the instant matter, ***Pontiac Ceiling & Partition Co., LLC***, 337 NLRB 120, 124 (2001), the Board affirmed the Regional Director's finding that an expansion of the geographic reach of the unit in the collective bargaining agreement which was acting as a bar still constituted an appropriate unit:

> [a]lthough this expanded unit is larger than historically had been the case under prior contracts . . . I see no basis for perpetuating a geographic division of plasterers into separate units, as requested by the petitioner, by ordering an election only in those counties which were not covered by the contract prior to the amendment of the unit (citing ***Dundee's Seafood, Inc.***, 221 NLRB 183 (1976), ***Groendyke Transport***, 171 NLRB 997, 998 (1968), and ***John Sunduall & Co.***, 149 NLRB 1022 (1964)).

Here, while there is little testimony concerning where the employer-members conduct their work, it is established that the employer-members have been working in different parts of the state of Michigan, including the areas set forth in the Local 514 collective bargaining agreement: Wayne, Oakland, Lapeer, Macomb, St. Clair, Washtenaw, Sanilac, and Livingston, excluding Lenawee Townships of Conway, Cohoctah, Deerfeld, Handy, Hartland, Osceoloa, Tyrone, Howell and the city of Howell. Since there are groups of employees at various worksites; the proper unit description is "one without geographic limitation." ***Premier Plastering***, supra. This comports with the unit description that the Board found to be appropriate in 2005. I find the language in the previously certified unit to continue to be appropriate.

E. The Plain Language of the Power Of Attorney Document Does Not Keep ACTA From Engaging in Negotiations With Another Union

ACTA's employer-members sign power of attorney documents. ACTA and the Intervenor contend that this power of attorney document forecloses ACTA from bargaining with

any plasterer union other than Intervenor Local 514 and that ACTA does not hold power of attorneys to represents its employer-members, vis-a-vis, their workers in general, or vis-a-vis labor unions in general. Therefore, ACTA asserts that it cannot represent any of its employer-members with respect to Petitioner.

However, the power of attorney form in question specifically provides that the employer-members delegate authority to the ACTA to negotiate and sign collective bargaining agreements with plasterers and to handle all matters pertaining to the labor unions listed "**as well as any other Unions if and when necessary**" (emphasis added). Intervenor Local 514 and ACTA assert that this language was meant to cover only those situations where a union has changed its name. No documentary or other evidence establishing this interpretation was provided, even when Petitioner explicitly requested such evidence while questioning ACTA's executive director under cross-examination. The language in the power of attorney documents is unambiguous in its terms that it allows for other unions, if necessary, to bargain with ACTA. The Board will enforce language that is unambiguous. See ***Commonwealth Communications***, 335 NLRB 76 (2001) (Board upholds language in collective bargaining agreement providing for a multisite unit as it is unambiguous in its terms). This is unlike the "assent" document described in ***Arden Electric***, 275 NLRB 654(1985), which the Board found "contained no reference to bargaining with any other unions." Cases cited by the Intervenors, such as ***D.A. Nolt***, 340 NLRB 1279 (2003), can be distinguished because only one union was included on the bargaining agent authorization. See also ***Arden Electric***, 263 NLRB 318 (1982), where the Board remanded the case to the regional director to determine the extent that the employers in the multi-employer unit, as demonstrated by letters of assent or other documents, agreed to bargain with a rival union. Here, the power of attorney document shows that such explicit assent was granted by employer-members.

F. The Unit Scope is Appropriate

Without much explanation, the Employer ACTA asserted at the hearing that the scope of the craft or trade is not appropriately limited in that it simply states "plasterers" and claims that workers would argue over whether the work was plasterer's work versus bricklayers, tapers or laborers work. The Employer's argument would bear more credence if the Unit had not been similarly defined since certification issued in 2005. The Employer has not presented any evidence of a change in circumstances that would warrant the scope of the unit to be inappropriate; thus, I find that the scope of the Unit continues to be appropriate.

G. Reichenbach Ceiling & Partition, Co.

I find it appropriate to direct an election as petitioned for with respect to Reichenbach Ceiling & Partition, Co. In its brief, Intervenor Local 514 acknowledged that it no longer had any objection to an election being held with respect to this Employer as it no longer had any contract bar or other issues with this petition. Since the contract bar that had been asserted concerned the International Plasterers, the Employer also has no basis for asserting that such a

bar exists. A recognized bargaining agent is entitled to the benefits of certification. ***General Box***, 82 NLRB 678 (1949).[21]

H. Daniel/Steiny Formula for Voter Eligibility

The parties stipulated to the use of 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 and thus, the ***Daniel/Steiny*** eligibility formula will apply, as noted in the attached Direction of Election.

CONCLUSIONS AND FINDINGS

Based on the foregoing discussion and on the entire record,[22] I find and conclude as follows:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.

2. The Employers are engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

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

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.

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

Architectural Contractors Trade Association

All journeymen and apprentice plasterers in the employment of constituent members of the Employer association, Architectural Contractors Trade Association [ACTA]; but excluding guards and supervisors as defined in the Act.

Reichenbach Ceiling & Partition Co.

All plasterers employed by the Employer out of its facility located at 48911 Legacy Parkway, Lansing, Michigan; but excluding guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the following Direction of Election.[23]

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[21] The record is silent regarding whether Intervenor Plasterers' International and/or Intervenor Local 886 seek a place on the Reichenbach ballot. Therefore, each of Intervenors Plasterers and Local 886 must advise me, in writing, of its intent, if any, to proceed to an election in the appropriate unit found, within 7 days from the date of this Decision and Direction of Election.

[22] The Petitioner and Intervenors Local 514 and Local 886 filed briefs which were carefully considered

DIRECTION OF ELECTION

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:

ARCHITECTURAL CONTRACTORS TRADE ASSOCIATION **Case 07-RC-125595**

Local 2, International Union of Bricklayers and Allied Craftworkers

or

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

or

Neither

REICHENBACH CEILING & PARTITION, CO. **Case 07-RC-125615**

Local 2, International Union of Bricklayers and Allied Craftworkers

or

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

or

Local 886, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO

or

Operative Plasterers'and Cement Masons' International Association of the United States and Canada, AFL-CIO[24]

or

None

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[23] At the hearing the parties stipulated and agreed to the conduct of a mail ballot election only, for each of the units found appropriate herein.

[24] If either Intervenor International Plasterers'or Intervenor Local 886 declines to participate in the election, their name will not appear on the ballot.

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 elections 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. Employers to Submit Lists 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 each 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 Employers 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 lists available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **August 13, 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.nlrb.gov**,[25] 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.

Because the list will be made available to all parties to the election, please furnish a total of **two** 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).]

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

[25] To file the eligibility list electronically, go to the Agency's website at **www.nlrb.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.

must be received by the Board in Washington by **August 20, 2014**. The request may be filed electronically through the Agency's website, **www.nlrb.gov**,[26] 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 Architectural Contractors Trade Association, Case 07-RC-125595 and Reichenbach Ceiling & Partition Co., Case 7-RC-125615, be severed from each other.

Dated at Detroit, Michigan, this 6th day of August 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

[26] To file a Request for Review electronically, go to the Agency's website at **www.nlrb.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.