UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of:	
ELECTRIC BOAT CORPORATION, Employer, and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1302, Petitioner, and METAL TRADES COUNCIL OF NEW LONDON COUNTY, Intervenor	01-RC-124746

BRIEF ON REVIEW FOR PETITIONER, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1302

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Dated: September 11, 2014

The decision of the Regional Director should be affirmed because, when applied to the criteria set forth in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1967), the unique facts and special circumstances set forth within the record support a severance election of carpenters[1] employed at the company's shipyard in Groton, Connecticut. Notwithstanding Petitioner's 70-year old role representing the interests of carpenters employed at the Electric Boat shipyard, its ability to continue doing so was suddenly extinguished in February of this year. The change occurred as a result of an ongoing dispute at the national level between the AFL-CIO and the United Brotherhood of Carpenters & Joiners of America. As a result of this change, carpenters suddenly found themselves without their long-maintained representatives at the bargaining table and within the grievance process, and were arbitrarily reassigned to different labor organizations that continued to be affiliated with Intervenor, the Metal Trades Council of New London County ("Intervenor" or "MTC").

In carefully considering the facts present here, the Regional Director concluded that the factors in *Mallinckrodt* militated in favor of severance, reasoning that labor peace and industrial stability would be better served by giving the petitioned-for unit the opportunity to vote for separate representation. In short, the Regional Director's Decision and Direction of Election ("Decision" or "D&D"), was based upon sound

[1] Petitioner seeks a unit of Carpenters, Joiner Checkers, Radiographic Linemen, Carpenter-Divers, Joiners, Joiner-Model and Joiner-Upholsters employed by General Dynamics Corporation ("Employer"). The classifications sought by Petitioner shall be collectively referred to as "carpenters". The petitioned-for unit is part of a broader unit of separate and distinct crafts represented by the MTC.

application of current Board law and the unique facts before it. Accordingly, the Board should affirm the decision of the Regional Director and allow the ballots to be counted.

Supplemental Argument[2]

1. The Regional Director's Decision Granting a Severance Election was Consistent with the Board's Stated Goal of "Free[ing itself] From the Restrictive Effect of Rigid and Inflexible Rules in Making [...] Unit Determinations".[3]

In *Mallinckrodt,* the Board recognized that the ultimate decision as to whether severance would better serve the worker in his effort to bargain collectively with his employer should not be based on a set of "rigid qualifications", but rather "evaluation of all considerations relevant to an informed decision in this area." 162 NLRB at 397; *see also Metropolitan Opera Ass'n, Inc.*, 327 NLRB 740, 741 (1999) (craft severance determinations should be made on case-by-case basis, taking "all relevant considerations" under review) (Hurtgen, dissenting) (*quoting Kimberly-Clark Corp.,* 197 NLRB 1172 (1972) ("In severance cases such as this we do not apply automatic rules but rather evaluate all relevant considerations.").

2. The Record Contains Unique Facts and Special Circumstances Supporting Severance.

Petitioner's sole and exclusive purpose since it was chartered in 1944 has been to serve the representational interests of carpenters employed at the company's shipyard in Groton. Hearing Trancript ("Tr.") 180, 195. Petitioner maintains its own bylaws (Tr.

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[2] Petitioner's position is more fully set forth in its Post-Hearing Brief to the Regional Director and its Opposition to Intervenor's Request for Review, a copy of the latter is appended for ease of reference.
[3] *Mallinckrodt*, 162 NLRB at 397-398.

195; Pet. Exh. 6), elects its own officers and stewards (Tr. 179, 196-97, 221-222), collects authorization cards and dues directly from its carpenter members (Tr. 148, 176), and holds regular membership meetings for its members. Tr. 177.

In this capacity, Petitioner handled the vast majority of grievances involving carpenters at the shipyard without MTC involvement. Tr. 125, 149, 181. Similarly, up until February 2014, Petitioner had played an integral part in representing the interests of carpenters at the bargaining table.[4] Tr. 131, 322-23.

On February 27, Petitioner was informed by Intervenor's president that it would no longer be permitted to participate in contract negotiations. Tr. 186. Intervenor's president acknowledged that he had been directed by the Metal Trades Department ("MTD") to prohibit Petitioner from participating in negotiations. Tr. 89, 186, 334-35. Shortly thereafter, Petitioner was provided with a MTD memo indicating how some – but not all – Local 1302 work/occupational titles would be divvied-up among the Boilermakers, Painters and Laborers local unions. Pet. Exh. 1(d). Intervenor's president reiterated that the MTC was simply following MTD orders. Tr. 344-45.

With Petitioner no longer "in the fold", carpenters in the shipyard, for the first time in approximately 70 years, no longer had a Local 1302 representative advocating for their interests in negotiations or handling grievances particular to carpenters. Tr. 90, 323.

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[4] In many respects, Petitioner's long-standing and substantial autonomy in representing the interests of its members makes its relationship with Intervenor more akin to joint, multi-union bargaining. *Cf. Consolidated Papers, Inc.*, 220 NLRB 1281, (1975) (bargaining does not render the individual craft units inappropriate and does not preclude individual unions from separately representing one of those craft units); *Pacific Coast Shipbuilders Assoc.*, 157 NLRB 384, 386 (1966) ("[A]lthough the unions had bargained jointly with the Employer for many years, neither the separate identity of the unit nor the Petitioner's representative status in that unit had been lost."); *Shell Oil Co.*, 116 NLRB 203 (1956) (jointly-negotiated agreements that maintain the separate identities of included craft groups do not preclude representation of an individual craft).

Absent from the negotiating table or the "shop floor" (from a grievance-handling perspective) was anyone that had ever worked as a carpenter, represented carpenters, or possessed any special qualifications to represent the interests of carpenters. Tr. 347, 349. Petitioner was never even notified of a strike authorization vote held by the MTC in March 2014. Tr. 207-08, 234; Pet. Exh. 7.

Recognizing the special and lengthy role played by Petitioner in the representation of carpenters at the shipyard, the Regional Director stated:

> 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.

D&D at 10.

3. The Regional Director's Decision Supports Industrial Stability, Labor Peace, and the Statutory Rights of Employees Under the Act.

In short, the Regional Director addressed each of the *Mallinckrodt* areas of inquiry in reaching his decision that severance was appropriate based upon the unique facts posed by this case. D&D at 10. Here, severance will not affect the vast majority of the existing bargaining unit – which will remain intact and represented by Intervenor. Removal of the small (approximately 189 out of 2,100), separate and distinct group of craft employees sought by Petitioner will not disrupt labor relations. Er. Exh. 2. The Regional Director specifically addressed this issue, stating:

> In *Mallinckrodt Chemical Workers*, supra, the Board emphasized the need for stability for 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 under that it was not "in the best interest of the [MTC] to separate carpenters from the bargaining unit."*** **MTD President Ault also understood that chaos could result.**
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> . . .
>
> 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 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.

D&D at 9-11 (emphasis added).

Finally, and based on the specific circumstances present here, it is clear that providing carpenters with an opportunity to choose a bargaining representative is wholly consistent with the employees' rights of self-organization and self-determination under the Act. *Madison Industries*, 349 NLRB 1306, 1309 (2007).

IV. CONCLUSION

The decision of the Regional Director should be affirmed because the petitioned-for unit constitutes a craft unit entitled to severance based upon the factors set forth in *Mallincrodkt, supra*. The record firmly supports the Regional Director's finding that the factors militating in favor of severance outweigh those that do not. Moreover, the Regional Director's finding that overall industrial stability and labor peace are furthered by granting carpenters a right to an election in this case is similarly well-supported by the special and unique facts contained within the record. For the reasons set forth herein, in Petitioner's previous briefs, and in the Regional Director's Decision and Direction of Election, the Decision and Direction of Election should be affirmed, the ballots counted and an appropriate unit certified.

Respectfully submitted,

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Dated: September 11, 2014

Certification

I, Thomas R. Landry, certify that on September 11, 2014, a copy of the within Brief on Review was filed electronically using the National Labor Relations Board's e-filing system. In accordance with Section 102.114 of the Rules and Regulations, a copy of the foregoing document was electronically sent to the following:

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In the Matter of:	
ELECTRIC BOAT CORPORATION, Employer, and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1302, Petitioner, and METAL TRADES COUNCIL OF NEW LONDON COUNTY, Intervenor	01-RC-124746

PETITIONER'S OPPOSITION TO INTERVENOR'S REQUEST FOR REVIEW

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Dated: August 7, 2014

I. INTRODUCTION

. . .

> [The AFL-CIO Metal Trades Department] can envision a host of legal complications that could arise if the MTD were to declare that Carpenters locals are no longer part of the local Metal Trades Councils. Notwithstanding such a directive, the NLRB and the FLRA may well continue to regard the Carpenters as an essential element in the representational scheme, a fact that no directive from this office could change. ...These potential complications are highlighted by some recent litigation involving one of the [MTD]'s Councils,... [T]he litigation does suggest the fact that by participation in the affairs of the [MTD] and its Councils over the years, the Carpenters and their local unions may well have attained legal rights that could be recognized in some circumstances by the courts or government agencies and that no mere order of disaffiliation may extinguish.

. . .

Letter from Ronald E. Ault, President of the AFL-CIO's Metal Trades Department, to John J. Sweeney, then-President of the AFL-CIO, dated August 21, 2003 (Pet. Exh. 1(a))

Notwithstanding the objections and premonitions raised above by the Metal Trade Department's President in 2003, in February this year the Metal Trades Council of New London County ("Intervenor" or "MTC") removed Petitioner from its 70-year old role representing the interests of carpenters employed at the Electric Boat shipyard located in Groton, Connecticut. It was this significant and unique circumstance that resulted in sudden labor instability and led Petitioner to seek severance of carpenters[1] from the Intervenor's bargaining unit. On June 26, 2014, the Regional Director issued a Decision

[1] Petitioner sought a unit of Carpenters, Joiner Checkers, Radiographic Linemen, Carpenter-Divers, Joiners, Joiner-Model and Joiner-Upholsters employed by General Dynamics Corporation ("Employer"). The petitioned-for unit is part of a broader unit of separate and distinct crafts represented by the MTC.

and Direction of Election ("D&D" or "Decision")) which concluded that, under the circumstances, severance was appropriate.

Petitioner hereby opposes the Request for Review filed in this case by Intervenor on July 21, 2014. Intervenor asserts within its Request for Review that the Regional Director departed from governing Board precedent and overlooked critical parts of the record in reaching the conclusion that the petitioned-for unit constituted a craft unit entitled to severance under the criteria set forth in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1967).

The Board should deny the Intervenor's request for review because the Intervenor has not complied with Section 102.67(c) of the Board's Rules and Regulations, which provide that "the Board will grant a request for review only when *compelling reasons* exist therefor." See Rules and Regulations, Sections 102.67(c) (emphasis added). That is, the Board should reject the Intervenor's request because it does not establish one or more of the following grounds:

> (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
>
> (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
>
> (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
>
> (4) That there are compelling reasons for reconsideration of an important Board rule or policy.
>
> (d) Any request for review must be a self-contained document enabling the Board to rule on the basis of its contents without the necessity of recourse to the record; however, the Board may, in its discretion, examine the record in evaluating the request. With respect to ground (2), and other grounds where appropriate, said request must contain a summary of all evidence or rulings bearing on the issues together with page citations from the transcript and a summary of argument. ***But***

such request may not raise any issue or allege any facts not timely presented to the Regional Director.

Id. at Section 102.67(c), (d) (emphasis added).

The Intervenor claims to proceed on prongs (1) and (2) above. In so doing, Intervenor conveniently mischaracterizes the Regional Director's D&D as failing to consider the illustrative "areas of inquiry" established in *Mallinckrodt* – when in fact the Regional Director not only considered each of these areas, but also reached well-support factual and legal conclusions as to each. Moreover, Intervenor cherry-picks from the record, misstates record testimony, and relies on several points that ultimately are irrelevant to the Regional Director's correct finding that the petitioned-for unit constituted a craft unit entitled to severance based upon the factors set forth in *Mallinckrodt*. In sum, the Regional Director's D&D was based upon sound application of current Board law and the unique facts before it. For these reasons, the Petitioner respectfully requests that Intervenor's Request for Review be denied.

II. FACTS

A. **The Shipyard**

The Employer performs the final outfitting and testing of Naval submarines at its 118 acre shipyard in Groton, Connecticut ("shipyard"). Transcript ("Tr.") 31-32. The Employer's employees are currently represented by three unions its Groton facility – the MTC, the Marine Draftsmen Association (affiliated with the United Autoworkers),[2] and the Patternmakers. Tr. 37. Throughout its history, the Employer has conducted separate

[2] The MDA represents the manufacturing engineering group. Tr. 46.

negotiations – and reached separate collective bargaining agreements – with each of these labor organizations. Tr. 156.

The MTC is an umbrella organization composed of nine local unions representing associated crafts at the shipyard. Tr. 123. Each one of the local unions has its own assigned work and "tradition craft jurisdiction". Tr. 87-89; Joint Exh. 1 (p.128). The following local unions represent the craft employees:

Local Union	Membership (as of 3/26/14)
Int'l Bhd. of Boilermakers, Local 614	452
Int'l Bhd. of Carpenters & Joiners of America, Local 1302	189
Office & Prof. Employees Int'l Union, Local 106	133
Int'l Bhd. of Electrical Workers, Local 261	333
Laborers Int'l Union of North America, Local 547	107
Int'l Assn. of Machinists & Aerospace Wkrs., Local 1871	476
Int'l Union of Painters & Allied Trades, Local 1122	159
UA of Journeyman of Plumbing & Pipefitting, Local 777	308
Int'l Bhd. of Teamsters, Local 493	68

Er. Exh. 2.

The MTC has served as the certified bargaining agent for all craft employees since 1979.[3] Board ("Bd.") Exh. 2.

B. Carpenters Local 1302

Petitioner was chartered by the United Brotherhood of Carpenters and Joiners of America ("UBC") in October 1944. Tr. 180, 195. Petitioner maintains its own bylaws. Tr. 195; Pet. Exh. 6. Petitioner's members are limited to those employees working at the Employer's Groton facility. Tr. 195. Specifically, Petitioner's members include shipyard employees within the following occupational titles:

[3] The American Federation of Labor preceded the MTC as the bargaining representative for craft employees at the shipyard from 1945 to 1979. Bd. Exh. 2.

- Carpenter
- Carpenter – Diver
- Decontamination Technicians
- Joiner
- Joiner – Checker
- Joiner – Model
- Joiner – Upholster
- Radiologic Lineman

Tr. 148, 176; Joint Exh. 1.

The employees occupying these occupational titles sign dues authorization cards for, and remit dues directly to, Local 1302. Tr. 148, 176. Employees within these occupational titles do not remit any dues to the MTC. Tr. 177. Local 1302 holds regular, monthly membership meetings for its members. Tr. 177. The MTC does not hold any regular meetings that rank-and-file members of Local 1302 can attend. Tr. 177.

All Executive Board officers, the Chief Steward, and the five general stewards within Local 1302 are all members of Local 1302 and elected solely by the members of Local 1302. Tr. 179, 196-97, 221-222. The MTC plays no role in electing or appointing anyone to fill these positions. Tr. 222.

C. Grievance Handling at the Shipyard

The vast majority of workplace concerns are resolved at the earliest stages of the grievance process – and without MTC intervention. Tr. 125, 149, 181. Each local union has one Chief Steward and at least one steward for each shift. Tr. 128. The Chief Steward and stewards interact with the Company on a daily basis to police the contract and resolve workplace issues involving their members. Tr. 149, 179. Among other things, the Chief Steward participates in grievance handling on behalf of the members within their local union. Tr. 147. Formal grievances are a rarity. Tr. 148.

When a formal grievance is initiated, the Chief Steward of the affected local union will draft the grievance and conduct a Step 1 hearing with a human resources representative. Tr. 181-82. The Company has four HR Specialists whose role it is to, among other things, handle grievances. Each specialist is assigned specific local unions to work with. Tr. 146-47.

When a grievance is not resolved at Step 2, the grievance comes before the Chief Stewards for consideration. Tr. 183-84. Neither Tardif nor the president of the MTC, Ken DelaCruz, could recall any specific instances where the Chief Stewards denied a local union's request to arbitrate a grievance. Tr. 183-84, 330. The Chief Steward of the affected local union continues to be actively involved in the grievance process through arbitration. Tr. 149.

The most-recent arbitration involving a Local 1302 member occurred in 2013. Unlike prior arbitrations (which occurred prior to the later-discussed revocation of Solidarity Charters issued to local unions affiliated with the UBC), Petitioner paid the full, half-share of the cost of the arbitration hearing, as well as the full cost for its legal representation. Tr. 205.

D. Contract Negotiations at the Shipyard

Up until February 27, 2014, a Chief Steward for each of the local trade unions, including the Carpenters, has participated in collective bargaining with the Company. Tr. 131, 322-23. The Chief Stewards advocate for the interests of the members of their union throughout the negotiating process. Tr. 155, 185. As a result of this advocacy, formal proposals are created for negotiations. Tr. 185. Some of the proposals reflect changes that impact upon specific crafts. Tr. 155. Various terms within the collective

bargaining agreement demonstrate that specific terms and conditions of employment have been negotiated to benefit specific crafts over the years. Tr. 353-54. For example, not all wage rates among the separate crafts are identical to one another.[4] Tr. 159-60; Joint Exh. 1.

E. **Department 252**

The carpenters' department is identified as Department 252. Tr. 50. Like each of the other crafts, carpenters are also identified by the color hard hat that they wear – yellow. Tr. 66, 457, 589. There are four general foremen assigned specifically to Department 252 – all of whom were former Carpenters. Tr. 102-103; Pet. Exh. 2. General foreman have between two to four supervisors reporting back to them. Tr. 47. These front-line supervisors directly oversee between 10 to 15 carpenters each. Tr. 47, 105. Other than a "very small percent" of the time, "maybe 1 or 2 percent", carpenters work directly under a Carpenter supervisor. Tr. 51.

Separate seniority and seniority lists are maintained for each craft, including the carpenters. Seniority is determined by time in occupational title. Tr. 152; Pet. Exh. 4. Various terms and conditions of employment, such as overtime, layoff and recall are determined by seniority. Tr. 152, 174, 223; Joint Exh. 1. Like the other crafts, carpenters maintain their own separate wage scales. Joint Exh. 1, Appd. A, Schedule A. Various other provisions of the collective bargaining agreement can similarly be found to impact specific crafts – and in some cases even their specific local unions. *See, e.g.,* Joint Exh. 1, Article II, Section 3.

1. The Work of the Carpenter

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[4] While benefits are the same among each craft union, they are also uniform company-wide. Tr. 172.

Members of Local 1302 perform a variety of complex tasks throughout the shipyard. A majority (approximately 93%) of work performed by carpenters falls into the following categories: Mold in Place (MIP) /Special Hull Treatments (SHT), staging, sound dampening/ deck covering/upholstery, lines and measures, movement of the ship (including transfer car services), and diving services. ER-6. Non-department 252 employees are not trained to perform this work. Tr. 569-70.

2. Separate Training Specific to Carpenters

All new hires, including Carpenters, go through a four or five-day indoctrination/training program. Tr. 266. Once the indoctrination program is complete, new carpenters are sent to Building 51 North to receive training specific to their craft. Tr. 109, 267.

The carpenter-specific training is a five-day program. Tr. 267. Once the carpenter-specific training program is complete, new carpenters are teamed-up with more experienced carpenters to gain proficiency in various carpentry skills. Tr. 107-08, 271. Once a carpenter gains proficiency in a specific skill, his supervisor will document that proficiency has been achieved and the carpenter can begin performing the task independently. Tr. 271.

Like the other trade-specific apprenticeship programs, the carpenters' state-certified apprenticeship program is currently inactive. Tr. 63. Alu anticipates that the program will be offered again. Tr. 63.

3. Separate Carpenter Work Locations

Throughout the shipyard, carpenters maintain separate work, rest and training areas from other crafts. Tr. 61, 93-100. This is true for the carpenter-divers, Tr. 251-52,

the joiners and upholsterers, Tr. 252-53, the linesmen, Tr. 254, and general carpenters, Tr. 253-59.

F. **Versatility.**

"Versatility" is the term used to define the use of craft employees to perform work within a craft jurisdiction other than their own. Versatility is limited to twelve weeks per year by the terms of the collective bargaining agreement, but in actuality, it is used far less frequently. Tr. 81.

The Employer generally notifies Tardif before it utilizes versatility which would impact carpenters. Tr. 199. Tardif estimates that the Employer has used versatility between a "half a dozen, eight times maybe" over the past ten years. Tr. 199. Malone confirmed that versatility impacts carpenters "very seldom". Tr. 227. The major reason for the limited nature of versatility is the fact that workers in other crafts cannot perform such carpenter functions as staging, MIP/SHT manufacturing and installation, contamination containment, diving, diver-tender, lines and measurements, etc. without first being appropriately trained. Tr. 228-229, 272-76. No non-Department 252 employees are trained to perform Scaffolding, MIP and/or SHT, Covering or Upholstery, Sound Dampening, Thermal and Accoustic, Diver (including Diver-Tender), Joiner or Linesmen work. Tr. 567-68.

Don Kniss is employed as a journeyman carpenter first-class with the Company. Tr. 241. Kniss has been employed as a carpenter with the Company since 1975. During that time, Kniss has performed almost every function that a carpenter can perform at the facility. Tr. 242. He has been a Ccarpenter Instructor with the Employer for the past 16 years. Tr. 241. During this time, Kniss has never trained any non-carpenter crafts in

scaffolding, lines and measures, covering and upholstering, diving, or rubber and sound insulation. Tr. 277-79. Kniss only recalls two instances when he trained non-carpenter trades in work traditionally performed by carpenters. One example involved several painters and the other involved a few boilermakers. Both examples occurred approximately 7 or 8 years ago and involved training in filling MIP seams and grinding them – minor portions of overall MIP-related duties often referred to as "incidental work". Tr. 277-78, 599.

The Employer's directors of operations also confirmed the limited nature of versatility. Vasco Castro, the director of operations for the Company's Carpenter and Painter departments for the past 10 years, could only refer to examples of general painting, incidental cleaning of pontoons, and snow removal during a blizzard.[5] Tr. 539-40. According to Castro, there is no versatility involving the carpenters department. Tr. 565. The last time there was a need for any was probably last summer. Tr. 565.

Harold Haugeto, director of operations for the Company's steel trades for the past 2 years, indicated that versatility was solely used to perform incidental stud shooting and/or grinding for a total of 10 to 15 shifts during the past year. Tr. 464, 491-92, 507.

Michael Monaco, the director of operations for the Company's inside and outside machinist departments since January 2013, acknowledged that "versatility" with Department 252 was limited to incidental work ("[s]mall duration, basic type work") occurring approximately a dozen time per year. Tr. 417, 449, 452.

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[5] The carpenters' role in snow removal is generally limited to the removal of snow from the topside of the ship, all staging, pontoons and basins. Tr. 239. Snow located in other areas of the facility is removed by subcontractors and the maintenance department. Tr. 239.

Brian Canavan, the director of operations for the Company's electrical department for the past nine years could only point to two prior occasions where Carpenters were versatized into Electricians or Electricians were versatized into Carpenters. Tr. 574, 586-587.

G. **Schism at the National Level**

The United Brotherhood of Carpenters & Joiners of America ("UBC") disaffiliated from the national AFL-CIO on March 29, 2001. As a result of the disaffiliation from the AFL-CIO, effective that same date, the UBC ceased to be an affiliate of the AFL-CIO's Building and Construction Trades Department ("BCTD") and the Metal Trades Department ("MTD"). Tr. 17-18.

By letter dated August 21, 2003, Ronald E. Ault, the President of the AFL-CIO's Metal Trades Department, wrote to the AFL-CIO, concerning its directive to take "all necessary steps to disaffiliate the [UBC] from the [MTD] and its Councils [] by September 5, 2003[.]" Pet. Exh. 1(a). Within the letter, Ault warned of "the enormous difficulties, practical and legal, that possibly could flow from disaffiliation of the Carpenters from the MTD and its Councils." *Id.* Ault further elaborated:

> [The MTD] can envision a host of legal complications that could arise if the MTD were to declare that Carpenters locals are no longer part of the local Metal Trades Councils. Notwithstanding such a directive, the NLRB and the FLRA may well continue to regard the Carpenters as an essential element in the representational scheme, a fact that no directive from this office could change. ...These potential complications are highlighted by some recent litigation involving one of the [MTD]'s Councils,... [T]he litigation does suggest the fact that by participation in the affairs of the [MTD] and its Councils over the years, the Carpenters and their local unions may well have attained legal rights that could be recognized in some circumstances

> by the courts or government agencies and that no mere order of disaffiliation may extinguish.

Id.

On or about February 24, 2006, Local 1302 was issued an "AFL-CIO Solidarity Charter" which enabled Local 1302 to re-affiliate with the MTD and the Metal Trade Council of New London County ("MTC-NLC").

At some unknown date prior to June 1, 2011, Ault authored a "Position Statement on Revocation of the Carpenters Solidarity Agreement". Pet. Exh. 9. Within the Position Statement, Ault recognized the ongoing rift between the UBC and the Building Trades Department, but advocated against revoking the AFL-CIO's Solidarity Agreement. Id. Within the Position Statement, Ault lays out "why I think revocation of the Solidarity Agreement should not be taken." Pet. Exh. 9. Specifically, the Position Statement warns:

> ...in some of these facilities [where there are Metal Trades bargaining units], particularly on the West Coast, Carpenters local unions have their own separate recognitions or certifications that could survive any attempt to revoke participation of the Carpenters in the Metal Trades units.
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> . . .
>
> To recap, the Metal Trades Department and the Carpenters International executed a national Solidarity Agreement in December, 2005. That agreement brought to an end the disputes that followed the Carpenters' earlier disaffiliation from the AFL-CIO and the creation of the Change To Win coalition by the Carpenters and other internationals which had also disaffiliated from the AFL-CIO. As a chartered Trade Department of the AFL-CIO, the Metal Trades Department had directed affiliated Metal Trades Councils to cease forwarding withheld dues to Carpenters locals; to remove Council officers who were members of the Carpenters; to remove Carpenters stewards; and to begin the process of redistributing jurisdiction held by Carpenters

locals within Councils to other trades. The Metal Trades Department's directives, in turn, led to the filing of unfair labor practice charges by the Carpenters with both the NLRB and the FLRA against the Department and some of its Councils (notably, in Hanford and in Bremerton). In once instance, there was even a lawsuit filed against one of our Councils and its officers alleging RICO violations.

In essence, the Solidarity Agreement that was executed (which required dismissal of all these charges and suits), and the local Metal Trades Council Solidarity Charters it authorized, allowed locals of the Carpenters to continue to maintain their presence in Metal Trades Councils: to receive dues, to appoint stewards, and for their representatives to hold office in the Councils. The Carpenters agreed to continue to pay fees equaling the normal per capita that other affiliates were required to pay.

. . .

Rovocation of the Solidarity Agreement at this point undoubtedly would result in more of the same kinds of litigation, unfair labor practice charges, and other challenges by the Carpenters we saw the last time. The potential seriousness of such charges and litigation should not be underestimated.

. . .

Urged on by the Carpenters, some employers could even go further and argue that expulsion of the Carpenters from the Councils constitute the kind of "schism" or fundamental change in status of their employees' bargaining representative that could relieve them of the legal obligation to continue to bargain with our Councils.

. . .

...local Councils' certifications in some locations could be questioned and arguably put at risk. In the very worst case scenario, NLRB or FLRA elections might be directed to resolve the question of whether a Council could legally continue to function as the unit's exclusive representative.

. . .

Moreover, in most locations, these Carpenters locals have been productive, active participants in our Metal Trades Councils, respecting the rights of other Council affiliates in jurisdiction and supporting them in other matters.

> ...revoking the Solidarity Agreement between the Carpenters and the Metal Trades Department and pulling the local charters because of on-going problems between the Carpenters and the Building Trades in other units and in other locations may not prove to be in anyone's best interests, ...

Id.

Notwithstanding Ault's own earlier warnings, by letter dated June 1, 2011, the UBC was notified by the MTD that, effective on or about August 1, 2011, the Solidarity Agreement between the UBC and the MTD would be terminated, and all Solidarity Charters issued to local unions affiliated with the UBC would be revoked. Pet. Exh. 1(b). Similarly, by letter dated June 1, 2011, Ault notified all Metal Trades and Atomic Trades Councils that, effective on or about August 1, 2011, the Solidarity Agreement between the UBC and the MTD would be terminated, and all Solidarity Charters issued to local unions affiliated with the UBC would be revoked. Pet. Exh. 1(c).

In or about July 2011, Ault sent an e-mail to the MTD Executive Council entitled "Jurisdictional Recommendations in Regard to United Brotherhood of Carpenters at MTCs". Pet. Exh. 1(d). The document was also provided to DelaCruz by a representative from the MTD. Tr. 333. Among other things, the document provides:

> New London MTC, GD Electric Boat Shipyard, Groton CN
>
> > Carpenters – who perform rubber sound insulation – IUPAT
> >
> > Carpenters and Joiners – IBB
> >
> > Divers – LIUNA

Pet. Exh. 1(d).

G. Petitioner's Efforts to Maintain the Status Quo and Labor Stability

Concerned about events beyond its control at the national level, on or about December 18, 2014, Local 1302 presented a "Local Solidarity Agreement between the Metal Trades Council of New London County, AFL-CIO and Carpenters Local 1302, a/w the New England Regional Council of Carpenters" to the President of the MTC-NLC, Kenneth DelaCruz. Pet. Exh. 1(e). Among other things, the Local Solidarity Agreement allowed for Local 1302 to continue electing their own stewards, participating in the affairs of the MTC, and providing representation to their members. *Id.*

By letter dated January 8, 2014, President DelaCruz wrote to President Ault concerning, among other things, the future relationship of the MTC-NLC and Local 1302. Pet. Exh. 1(f). Within the letter, DelaCruz bravely wrote:

> **Is there any way [Local 1302] can stay in our council? We do not have a problem with the carpenter union or its members and if possible would like to maintain a working relationship with each other. ... [I do not believe it would be] in the best interest of the [MTC] to separate [Local 1302] from the bargaining unit.**

Id. (emphasis added)

DelaCruz and the vast majority of the other Chief Stewards from the other local unions supported Petitioner's proposal. Tr. 320, 335-37. DelaCruz, however, was ultimately unsuccessful in convincing the MTD to agree to execute the Local Solidarity Agreement. Tr. 320.

On February 27, Tardif was informed by DelaCruz that Local 1302 could no longer participate in contract negotiations. Tr. 186. Specifically, DelaCruz indicated that he had been directed by the MTD to no longer allow Local 1302 to participate in negotiations. Tr. 89, 186, 334-35. Thereafter, Tardif asked DelaCruz to provide him with written confirmation that Local 1302 would no longer be allowed to participate in

negotiations. Tr. 190. In response, DelaCruz provided Tardif with two letters from Ronald E. Ault date June 1, 2011. Tr. 190; Pet. Exh. 1(b) & (c).

Within days, Tardif received the MTD memo indicating how some – but not all – Local 1302 work/occupational titles may be reassigned among the Boilermakers, Painters and Laborers local unions. Pet. Exh. 1(d). DelaCruz indicated that the MTC – the certified bargaining representative of the craft employees – was powerless to make any decisions concerning the assignment of Local 1302 work. DelaCruz offered the following response to a question from the MTC's counsel:

> Q. To be really technical about it, you're going to do – you're going to do what your boss [sic] says, but it's ultimately a MTC decision as to where [the members of Local 1302] go, correct?
>
> A. No. It's going to be, to my knowledge, the Executive Council [of the MTD].

Tr. 344-45.

H. The Adequacy of Representation

The contract negotiations occurring at the time of the representation hearing in this matter were the first time in approximately 70 years that the Employer's carpenters had not had a Local 1302 representative participate in bargaining with the Company. Tr. 90, 323. Indeed, prior to February 27, 2014, Tardif participated in preparations for negotiations with the Employer – just as he has in the prior two negotiations. Tr. 186.

Without Tardif, the MTC negotiating committee included no one that had ever worked as a carpenter, represented carpenters, or possessed any special qualifications to represent the interests of carpenters. Tr. 347, 349. More broadly, neither the MTC, nor any of its affiliated local unions, have any special qualifications to represent the interests of carpenters. Tr. 347.

At the time of the hearing, contract negotiations between the Employer and the participating local unions were ongoing. The Employer acknowledged not only that seniority could be re-negotiated to negatively impact carpenters, but that "[a]nything's subject to negotiations." Tr. 160. No terms and conditions to specifically benefit Department 252 employees had been agreed upon. Tr. 354. The only issue that had been raised (involving increasing pay for Divers) was suggested **by Tardif** during preparations for negotiations. Tr. 359. At the time of the hearing, Local 1302 had been given no updates on the status of contract negotiations with the Employer. Tr. 186-87.

On March 28, 2014, the MTC held a strike authorization vote for all employees represented by MTC-affiliated local unions. Tr. 207-08. Petitioner was never given any formal notice of the vote and it was not given the opportunity, as it had in the past, to set up a table where Local 1302 members could vote. Tr. 207-08, 234; Pet. Exh. 7.

Among his multiple duties as president of Local 1302, Mike Malone oversees the overtime and road work lists for Local 1302 members. Malone reviews and updates the lists to make sure members are being selected consistent with the terms of the Collective Bargaining Agreement. Tr. 223-25. No other trades conduct this function for their members. Tr. 223, 225. If Local 1302 ceased representing carpenters in this way, Malone doesn't believe any other craft would assume this role going forward. Tr. 225-26.

Tardif, Petitioner's Chief Steward, also raised concerns over jurisdiction disputes in the future. He recalled that in or around 2010, the Painters local union claimed work involving the use of a high-pressure washer to remove MIP from the outside of the hull. Tr. 200. Carpenters had always historically performed MIP removal and claimed the

work as well. Tr. 200. The award of the work was contested by Petitioner and Local 1302 ultimately prevailed. Tr. 201. In the future, if Carpenters are reassigned to other local unions, claims involving the carpenters' jurisdiction of work will only be resolved if the local union representing the interests of carpenters chooses to raise the issue. Tr. 331-32.

Kniss, a Carpenter and member of Local 1302 for approximately 40 years, would also like to continue being represented by Local 1302. Tr. 607. Among other things, Kniss wants to have a "choice" as to what labor organization represents his interest. Tr. 608-09. Indeed, in all likelihood, the voting power of former Local 1302 members will be all but extinguished when they are placed among a larger bargaining unit of craftworkers with loyalty to their local unions. Er. Exh. 2. Kniss believes it is important to have someone that is familiar with the occupational role of a Carpenter at the Company to represent his interests. Tr. 610. Moreover, Kniss is concerned that if reassigned to another local union that the Company will utilize the opportunity to increase versatility within the newly modified local union membership – and reduce jobs within the local union as a result. Tr. 607.

I. Ongoing Labor Stability[6]

1. The Company's Relationship with Petitioner

The Company has had a very positive working relationship with Petitioner. Alu believes that Local 1302 has represented its members well over the years. Tr. 89. Allowing the Petitioner to continue to represent the interests of Carpenters in negotiations

[6] Notably, the Company has suffered from two, prolonged MTC strikes in the past. Both occurred over multiple months in 1975 and 1988, respectively. Tr. 126, 170.

would create a "stabilizing effect" vis-a-viz labor relations with the Company. Tr. 145-46. Neither DelaCruz, Alu, nor Alger have any objections to Petitioner participating in contract negotiations. Tr. 89, 155, 342.

2. The Confusion and Concerns of Local 1302 Members

Since Petitioner's removal from negotiations in late February, fear, frustration, and concern among Local 1302 members have boiled-over. Michael Malone, the President of Local 1302, has been approached repeatedly – before, during, and after the work day – by Local 1302 members asking questions about their job security, seniority, and numerous other issues that he has no answer to. Tr. 232-33. The confusion and anger voiced by the members was on full display at Petitioner's March general membership meeting and continues to this day among Local 1302 members. Tr. 234.

3. Representation Patterns within the Shipbuilding Industry

The shipbuilding industry throughout the United States is replete with examples of MTD-affiliated bargaining units "co-existing" with other craft bargaining units. Tr. 290-91. For example, in Pascagoula, Mississippi, Huntington Ingalls maintains a private shipyard that produces ships for the Navy. Tr. 382. The Metal Trades Council represents all production and maintenance employees at the shipyard, except electricians. Tr. 382, 400; Int. Exh. 8. The electricians are represented by a separate local union affiliated with the International Brotherhood of Electrical Workers. Tr. 382, 400.

In the Bay Area and the Pacific Northwest, similar bargaining patterns are also common. Tr. 290; Pet. Exhs. 13-25. Indeed, the MTD president has recognized:

> ...in some of these facilities, particularly on the West Coast, carpenter local unions have their own separate recognitions or certifications that could survive any attempt

> to revoke participation of the carpenters in the metal trades units.

Pet. Exh. 9. For example, in Puget Sound, there is a mixed Naval/commercial shipyard that maintains separately certified bargaining units among the various trades/crafts. Tr. 384. Similarly, in the Bay Area shipyard, the Carpenters maintain a separate bargaining unit from the Metal Trades Council. Tr. 384-85. Notwithstanding this fact, the Carpenters and Metal Trades Council negotiate together for successor collective bargaining agreements. Tr. 396-97.

Indicative of the recent dissention at the national level, numerous shipyards have recently witnessed the creation of separate, stand-alone Carpenter bargaining units (and collective bargaining agreements) following the expiration of MTC contracts the Carpenter locals had previously been a part of. Tr. 619-20. Examples of this can be seen at the following shipyards and within the related collective bargaining agreements:

- State of Washington/ Puget Sound (maintenance of Washington State Ferries) (Pet. Exh. 13, 14)
- Cascade General, Inc./ Pacific Coast – including work for the Navy (Tr. 619-20; Pet. Exh. 15, 16)
- Lake Union Drydock Company/ Puget Sound (Pet. Exh. 17-19)
- J.M. Martinac Shipbuilding Corp./ Pacific Coast (Pet. Exh. 20, 21)
- Pacific Fisherman Shipyard and Electric, LLC/ Pacific Coast (Pet. Exh. 22-25)

Finally, there are also multiple examples of where, notwithstanding the fact that the Metal Trades Council serves as the certified collective bargaining representative at the shipyard, UBC-affiliated local unions continue to participate in grievance-handling and negotiations. Tr. 296. At the Portsmouth (NH) Naval Shipyard, the collective

bargaining agreement has expired at the shipyard but the UBC-affiliated local union continues, as usual, to participate in Metal Trades Council business. Tr. 297. The president of the UBC-affiliated local union serves as the executive secretary of the Metal Trades Council. Tr. 297, 612.

Argument

A. The Regional Director Correctly Applied Board Precedent in Reaching the Conclusion that Severance Will Lead to Industrial Stability and is Therefore Appropriate.

The Board has established the severance doctrine in order to assist it in determining "what would best serve the working [person] in his effort to bargain collectively with his employer..." *Mallinckrodt*, 162 NLRB at 392. In turning away from an earlier test adopted in *American Potash & Chemical Corporation*, 107 NLRB 1418 (1954), the Board in *Mallinckrodt* sought to distance itself from the "rigid qualifications" established within *American Potash* so that it could instead "broaden [its] inquiry to permit evaluation of all considerations relevant to an informed decision in this area." 162 NLRB at 397. The Board in *Mallinckrodt* went on to explain that "[t]he following areas of inquiry are ***illustrative*** of those we deem relevant:

> 1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.
>
> 2. The history of collective-bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations,

> and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
>
> 3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
>
> 4. The history and pattern of collective bargaining in the industry involved.
>
> 5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
>
> 6. The qualifications of the union seeking to "carve out" a separate unit, including the union's experience in representing employees like those involved in the severance action.
>
> In view of the nature of the issue posed by a petition for severance, ***the foregoing should not be taken as a hard and fast definition or an inclusive or exclusive listing of the various considerations involved in making unit determinations in this area***. No doubt other factors worthy of consideration will appear in the course of litigation. ***We emphasize the foregoing to demonstrate our intention to free ourselves from the restrictive effect of rigid and inflexible rules in making our unit determinations***. Our determinations will be made only after a weighing of all relevant factors ***on a case-by-case basis***, and we will apply the same principles and standards in all industries.

Id. at 397-398 (internal footnotes omitted; emphasis added).

The Board continues to hold fast to the guiding principles articulated in *Mallinckrodt*. *See, e.g., Burns & Roe*, 313 NLRB 1307, 1308 (1994) (articulating same area of inquiry); *MGM Mirage*, 338 NLRB 529, 532 (2002) (severance determination

based upon all factors relevant in the case); *Kimberly-Clark Corp.,* 197 NLRB 1172 (1972) ("In severance cases such as this we do not apply automatic rules but rather evaluate all relevant considerations.").

In concluding in the instant case that severance was appropriate, the Regional Director went to great lengths to consider each of the six areas of inquiry discussed in *Mallinckrodt*. The ultimate conclusions and finding reached by the Regional Director were well-supported by the record, based on "the unique facts posted by this case" and the desire to maintain industrial stability at the shipyard. D&D at 10. Moreover, even if it is determined that the Regional Director somehow strayed from the six, "illustrative" areas of inquiry outlined in *Mallinckrodt*, it is not fatal to the decision.[7] Indeed, the Board in *Mallinckrodt* recognized that the six factors were neither "*an inclusive or exclusive listing of the various considerations involved in making unit determinations in [the context of severance].*" Therefore, to the extent that the Regional Director's decision was not based upon a rigid inquiry articulated in *American Potash*, but instead relied on numerous factors which led to the ultimate conclusion that severance "would best serve the working [person] in [the] effort to bargain collectively with [the] employer…", he fulfilled the obligations required by *Mallinckrodt.*

1. The Regional Director Considered Each of the Six Areas of Inquiry in *Mallinckrodt.*

[7] Even Intervenor appears to tacitly recognize that the six factors described in *Mallinckrodt* need not be the only considerations scrutinized in every case. Indeed, within its Request for Review, Intervenor refers only to five factors for consideration in craft severance cases, eliminating the sixth factor articulated in *Mallinckrodt* – the qualifications of Petitioner to represent the petitioned-for unit. Intervenor's Request for Review at 12.

Area of Inquiry No. 1: Whether the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen.

Intervenor does not challenge the Regional Director's conclusion that the petitioned-for unit constitutes a separate and distinct homogenous craft. Intervenor's Request for Review, at 13, n.6 ("The Intervenor has not challenged the designation of the carpenters as a craft…"); Intervenor's Post-Hearing Brief, at 24 ("We do not question that the work performed by employees in the carpenters classifications that are subject to Local 1302's petition are skilled craftsman[.]").

Area of Inquiry No. 2: The history of collective-bargaining of the employees sought and at the plant involved.

In evaluating the second factor articulated in *Mallinckrodt*, the Regional Director recognized Intervenor's significant history representing a plant-wide craft unit as well as the Petitioner's 70-year old role, "albeit under the umbrella of the Intervenor", representing the interests of carpenters at the shipyard in collective bargaining and grievance handling. D&D at 4-5. The Regional Director stated:

> 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.

D&D at 10.

Relying on the Board's decisions in *Houdaille-Duval-Wright Co.,* 183 NLRB 678 (1970), and *Metropolitan Opera*, 327 NLRB 740 (1999), Intervenor mischaracterizes the Regional Director's consideration of the petitioned-for unit's history "at the bargaining table" and "in the affairs of the MTC" as granting, in effect, *de facto* bargaining agent status to Petitioner. Intervenor's Request for Review at 25. On the contrary, the Regional Director properly considered Petitioner's labor relations history as a factor in determining whether severance was appropriate. Consideration of this factor is not only consistent with the areas of inquiry set forth in *Mallinckrodt*, but also common sense. The Board's fact-sensitive inquiries in *Houdaille-Duval-Wright Co.* and *Metropolitan Opera* do not undermine this logic. *See, e.g., Houdaille-Duval-Wright Co.*, supra (denying severance based upon petitioned-for unit's functional integration with other employees); *Metropolitan Opera*, supra (denying severance as it would disturb "stable" and "amicable" bargaining relationship).

The Regional Director further considered such additional factors as the Employer's history of bargaining with multiple units at the shipyard, D&D at 6 ("There are two other unions at the [shipyard]: the Marine Draftsmen of America [] and the Pattern Makers Association. ...The Employer bargains separately with each union, and has a separate collective bargaining agreement with each union. The bargaining relationships have existed for decades.),[8] **DelaCruz'** desire to have Petitioner "remain in

[8] *See, e.g., Mason & Hanger-Silas Mason Co.*, 180 NLRB 467, 468 (1969) (pattern of separate representation by other unions "tends to show ... that the establishment of a separate unit of took and gauge department employees would not disrupt the stability of labor relations in this plant.").

our council", D&D at 8, and the MTD's directive barring Petitioner from continuing in any representational role vis-a-viz its members. Id.

Contrary to the Intervenor's contentions within its Request for Review, the length of its bargaining history with the Employer (since 1979), by itself, is insufficient to prohibit severance. *See, e.g., Downingtown Paper Co.*, 192 NLRB 310 (1971). In considering the intervenor's 28 year bargaining history with the company, the Board in *Downington* recognized:

> While the record does indicate that there is a long bargaining history between the Employer and the Intervenor covering the employees and the drivers, except for the over-the-road drivers who were not employed until January 1969, and that the over-the-road drivers do share similar benefits, and they have been represented by the Intervenor, these factors alone do not preclude severing the over-the-road truckdrivers from the existing unit, where, as here, the over-the-road drivers share a community of interests separate and apart from the other drivers and employees.

Id.

Finally, and as it relates to the important issue of the preservation of labor stability, the Regional Director thoughtfully concluded:

> In *Mallinckrodt Chemical Workers*, supra, the Board emphasized the need for stability for 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 under that it was not "in the best interest of the [MTC] to separate carpenters from the bargaining unit."*** **MTD President Ault also understood that chaos could result.**
>
> . . .

> 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 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.

D&D at 9-11 (emphasis added).

> Area of Inquiry No. 3: The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.

In a complete "about-face", Intervenor now asserts that the record fails to support the Regional Director's conclusion that the petitioned-for unit has established and maintained a separate identity. Within its Post-Hearing Brief, Intervenor candidly acknowledged that **"[i]t is also true that the carpenters have maintained a somewhat separate identity during their inclusion in the larger unit, through their representation of employees during the first two stages of the grievance procedure and in assisting in daily contact administration."** Intervenor's Post-Hearing Brief, at 25 (emphasis added). Intervenor is now precluded from challenging this factor. Rules and Regulations, Section 102.67(d) ("…such request [for review] may not raise any issue

or allege any facts not timely presented to the Regional Director.")

Irrespective of whether Intervenor waived its right to question the separate identity of the petitioned-for unit, the Regional Director's findings and conclusions relative to this issue are well-supported by the record. Within the Decision, the Regional Director cites to numerous facts in support of the separate identify maintained by the carpenters, including the following:

- Work assignment along traditional craft and jurisdictional lines (D&D at 20; Joint Exh. 1, MOU 11 (recognizing the "benefits of traditional craft jurisdictions")
- Differing wage rates compared to other classifications (D&D at 25; Joint Exh. 1, Appx. A, Schedule A)
- Differing working conditions as articulated in memoranda within the Collective Bargaining Agreement specific to carpenters (Id.)
- Differing seniority lists by classification – which govern overtime, layoff, vacation time, sick time and recall (D&D at 25-26; Tr. 152; Pet. Exh. 4)
- Separate tools (D&D at 26; Tr. 65, 259-65)
- Separate attire (hard hats) (Id.; Tr. 66, 457, 589)
- Separate training (D&D at 10-14; Tr. 109, 267)
- Separate department and organization (D&D at 26-27; Tr. 50)
- Separate supervision (D&D at 27; Tr. 102-03; Pet. Exh. 2)

D&D at 25-27.

As it relates to the issue of versatility, the Regional Director expressly found the occurrences to be "sporadic" and involving the less-skilled facets of the work. D&D at 24. See, e.g., *Burns v. Roe Services Corp.*, 313 NLRB 1307 (1994).[9]

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[9] Intervenor spends significant time within its Request for Review arguing against the application of *Burns v. Roe Services Corp.*, 313 NLRB 1307 (1994) and other non-craft

Finally, and as discussed above as well, examples of the petitioned-for unit's participation in the existing pattern of bargaining, are prevalent throughout the record. On this issue, the Regional Director concluded:

> 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 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.

D&D at 10-11.

Area of Inquiry No. 4: The history and pattern of collective bargaining in the industry involved.

The Regional Director addressed the issue of collective bargaining within the industry throughout pages 27 – 29 of the D&D. Following an extensive examination of the varying forms of representation within shipyards throughout the country (including

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severance decisions within the *Mallinckrodt* framework. However, a recent decision of the Board has recognized the application of *Burns & Roe* ***within the context of craft severance***. *See, e.g., Kaleida Health Employer*, 2012 WL 6561133 at *1, fn.1 (N.L.R.B.) (adopting regional director's decision denying severance and citing to Burns & Roe approvingly).

numerous locations where metal trades council bargaining units exist alongside separate craft bargaining units), the Regional Director concluded that no clear industry pattern exists. D&D at 29; Tr. 382, 400; Int. Exh. 8; Tr. 290, 384-85; 396-97; Pet. Exhs. 9, 13-25; *cf. Safeway Stores*, 178 NLRB 412 (1969) (inconclusive history and pattern of bargaining in the industry supported severance).

> Area of Inquiry No. 5: The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.

The Regional Director likewise thoroughly addressed the issue of functional integration, concluding that "[c]arpenters have their own department, are separately supervised the majority of the time, and perform their own work, even thought they may do so in close proximity to other employees while they are working." D&D at 19. The Regional Director also recognized that versatility has impacted the carpenter occupational title in a limited and inconsequential way. The training requirements necessary to perform the vast majority of the work performed by carpenters prohibits any significant or meaningful level of crossover. *See, e.g., E.I. du Pont & Co.*, 162 NLRB 413, 418 (1966) (integration of operations requiring some crossover between craft and non-craft employees, or between employees of different crafts, is permissible in a craft situation).

The Regional Director further explained:

> 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 of 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, ...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&D at 19-20.

In sum, the Regional Director's conclusion that "the work of carpenters is not so functionally integrated with other employees so as to preclude severance" is has broad support from Board precedent and the record. *See also Burns & Roe Services Corp.*, 313 NLRB 1307, 1309 (1996) ("Any electrical work performed by nonelectrical employees during preventative maintenance is limited primarily to lesser skilled tasks."); *Dick Kelchner Excavating Co.*, 236 NLRB 1414, 1414-15 (1978) (finding that operators and laborers constituted separate, appropriate units notwithstanding fact that operators spend a substantial amount of time performing as laborers).

Area of Inquiry No. 6: The Qualifications of Petitioner to Represent the Petitioned-for Unit.

Like the area of inquiry above, Intervenor does not challenge the Regional Director's conclusion that Petitioner is uniquely well-qualified to represent the petitioned-for unit. D&D at 10; Tr. (DelaCruz) at 347, 349. Even if it did, the Regional Director's conclusion here is well-supported by the law and the facts. The Regional Director explained:

> 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 [Local 1302].

D&D at 10.

Based on the above, it is clear that the Regional Director addressed <u>each and every one</u> of the *Mallinckrodt* areas of inquiry in reaching his decision that severance was appropriate based upon the unique facts posed by this case. D&D at 10.

B. <u>The Regional Director's Fact-Specific Finding that the Petitioned-for Unit Meets the Criteria for Severance Was Not Clearly Erroneous.</u>

Intervenor asserts that "the Regional Director made critical errors of fact in reviewing, or overlooking, parts of the record in this case." (Request for Review at 2) However, the three specific instances Intervenor cites to within its Request for Review find substantial support within the record. Moreover, even if it were somehow determined that critical errors were made, they do not undermine the Regional Director's ultimate decision that the unique circumstances presented here supported a finding that petitioned-for unit constituted a craft unit entitled to severance under the factors set forth in *Mallinckrodt*.

Intervenor initially argues that "[t]he Regional Director incorrectly stated the MTC conceded the separate-identity factor in its post hearing brief." (D&D at 20, fn.8) Intervenor asserts that it "has always vigorously disputed petitioned-for unit's separate identify..." Id. However, in support of his finding the Region Director clearly drew upon the following statement contained within Intervenor's post-hearing brief:

> It is also true that the carpenters have maintained a somewhat separate identity during their inclusion in the larger unit, through their representation of employees during the first two stages of the grievance procedure and in assisting in daily contact administration.

Intervenor's Post-Hearing Brief at 25.

Intervenor's efforts to try and distance itself from positions it previously took falls into the "too little, too late" category. Indeed, pursuant to the Board's Rules and Regulations, it is barred from doing so. See Rules and Regulations, Section 102.67(d).

Furthermore, and as discussed more fully above, even if Intervenor's prior position is completely disregarded, the Regional Director's finding that the carpenters maintained a separate identity is well-supported by the remainder of the record. Among the facts which the Regional Director relies upon incude differing: wage rates and scales, working conditions, seniority lists, tools, attire, training, departments and organization, and supervision. D&D at 25-27.

Intervenor next argues that "the Regional Director's bare assertion that the Petitioner has 'a long history of representing carpenters at the employer,' (D&D 5) is wrong as a matter of fact[.]" Request for Review at 23. First and foremost, and as mentioned above, Intervenor has already candidly acknowledged that "[i]t is also true that the carpenters have maintained a somewhat separate identity during their inclusion in the larger unit, ***through their representation of employees*** during the first two stages of

the grievance procedure and in assisting in daily contact administration." Intervenor Post-Hearing Brief at 25 (emphasis added). Additionally, the Regional Director recounts numerous, uncontested facts elicited from the record which support his finding that "Petitioner ... has a long history of representing carpenters at the Employer, albeit under the umbrella of Intervenor." D&D at 5. Specifically, the Regional Director's conclusion is supported by, among others, the following facts:

- Petitioner has been chartered since 1944 for the sole purpose of representing the interests of carpenters at the Employer (D&D at 5)
- Petitioner maintains and elects its own Executive Board, officers and stewards (Id.)
- Petitioner maintains "its own charter, by-laws, membership meetings, and dues requirements." (Id.)
- Most carpenters grievances are resolved at lower levels within the grievance procedure – by stewards elected by Petitioner, not Intervenor (Id.)
- Petitioner's Chief Steward has the authority to resolve grievances with the Employer at or before the first step without any intervention or prior approval by the Intervenor (D&D at 6)
- Petitioner paid the full cost of arbitration for a carpenter-related grievance that recently went to arbitration. (Id.)

Accordingly, Intervenor's argument once again finds no support in the record.

Finally, Intervenor claims that "there is absolutely no evidence that the petitioned for employees have been inadequately represented at the bargaining table." Request for Review at 25-27. In making this argument, Intervenor overlooks significant parts of the record, including the following:

- On February 27, 2014, and for the first time in 70 years, Petitioner was not allowed to represent the interests of carpenters in contract negotiations with the Employer (D&D at 8; Tr. 90, 186, 323)

- During the 2014 negotiations, the MTC negotiating team was represented by all crafts, except the carpenters (Tr. 347, 349)

- Neither DelaCruz, nor the MTC as a whole, possesses any special qualifications to represent the interests of carpenters (D&D at 8; Tr. 347)

- Unlike the other crafts, the Employer's carpenters were kept in the dark about the progress of negotiations (D&D at 8; 186-87)

- The only carpenter-specific proposal raised during negotiations in 2014 was suggested by Tardif during preparations for negotiations (before he was told he could no longer participate) (D&D at 8; Tr. 359)

- A carpenter will never hold the position of chief steward again unless he obtains the wide-spread support of employees from a different craft union (D&D at 8; Tr. 608-10)

- Petitioner was never provided notice of a strike authorization vote affected carpenters and other craftworkers (D&D at 9; Tr. 207-08)

- Jurisdictional disputes affecting carpenters represented by unions affiliated by other crafts may never get raised or resolved (Tr. 331-32)

Contrary to Intervenor's argument, the D&D, and the record as a whole, is replete with facts supporting the Regional Director's finding that carpenters at the shipyard no longer have the representation they relied upon over the past 70 years. Although under the umbrella of the MTC, Petitioner's long-standing role assisting its members (due in large part to its specialized knowledge of its members and their jobs) is undeniable. It was Petitioner's sudden removal from this role that resulted in labor instability. The Regional Director's decision granting the severance petition preserves the status quo ante and stabilizes labor relations at the shipyard.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board deny Intervenor's request for review.

Respectfully submitted,

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Dated: August 7, 2014

Certification

I, Thomas R. Landry, certify that on August 7, 2014, a copy of the within Opposition to Intervenor's Request for Review was filed electronically using the National Labor Relations Board's e-filing system. In accordance with Section 102.114 of the Rules and Regulations, a copy of the foregoing document was electronically sent to the following:

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