

Freetown, MA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BAY STATE DRYWALL COMPANY, INC.  
Employer

and

Case 01-RC-129480

NEW ENGLAND REGIONAL COUNCIL OF  
CARPENTERS  
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held July 10, 2014, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 10 for and 8 against the Petitioner, with 6 challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings<sup>1</sup> and recommendations, and finds that a certification of representative should be issued.

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<sup>1</sup> The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

In finding that common supervision may be outweighed by other factors in the community-of-interest analysis, and that some minimal overlap of lesser skilled duties does not render the petitioned-for unit inappropriate, we do not rely on *Grace Industries, LLC*, 358 NLRB No. 62 (2012), cited by the hearing officer. Instead we rely on *Home Depot USA, Inc.*, 331 NLRB 1289, 1291 (2000), and the additional cases upon which the hearing officer relied. The hearing officer also cited *Grace Industries* for the

## CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for New England Regional Council of Carpenters, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time carpenters, apprentice carpenters, and working carpenter foremen employed by the Employer, but excluding all other employees, EIFS installers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Dated, Washington, D.C., February 23, 2015.

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Kent Y. Hirozawa, Member

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Harry I. Johnson, III, Member

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Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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proposition that area practice and history of collective bargaining are relevant considerations in determining the appropriateness of the unit. We agree with that well-established proposition, and its application here, but rely instead on *R. B. Butler, Inc.*, 160 NLRB 1595, 1599-1600 (1966) (citing bargaining history in industry and area as evidence supporting a petitioned-for unit of construction laborers); *Del-Mont Construction Co.*, 150 NLRB 85, 87 (1964) (finding appropriateness of separate unit of heavy-equipment operators supported by historical industry practice). See also *Macy's*, 361 NLRB No. 4, slip op. at 13 fn. 50 (2014).

Member Johnson finds the petitioned-for unit appropriate under the Board's traditional community-of-interest analysis. Accordingly, under the circumstances of this case, Member Johnson finds no need to express a view whether *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), was correctly decided and correctly applied here.