

**Sohio Natural Resources Company, Uranium Operations and International Union of Operating Engineers, Local 953, AFL-CIO, Petitioner. Case 28-RC-3468**

August 25, 1978

**DECISION ON REVIEW AND DIRECTION OF ELECTION**

BY CHAIRMAN FANNING AND MEMBERS JENKINS  
AND PENELLO

On May 15, 1978, the Regional Director for Region 28 issued a Decision and Order in the above-entitled proceeding in which he dismissed the petition, finding that the Petitioner's requested unit limited to the Employer's milling and surface production and maintenance employees but excluding mine employees was too narrow in composition. In accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's Decision on the grounds, *inter alia*, that the mill and mine employees do not share a community of interest and that the effect of a Board decision finding that the only appropriate unit is one composed of both mill and mine employees constitutes a denial of union representation to the mill employees, a group actually working and functioning separately and autonomously from the mine employees. Thereafter, the Employer filed an untimely opposition to Petitioner's request for review which was rejected by the Board.

The Board, by telegraphic order dated June 15, 1978, granted the request for review. Thereafter, the Employer filed a brief on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this proceeding with respect to the issues on review, including the Employer's brief on review, and makes the following findings:

The Petitioner seeks to represent a unit of mill and other surface production and maintenance employees, including warehouse employees at the Employer's Seboyeta, New Mexico, uranium operations; but excluding, *inter alia*, all mine employees at the site. The Employer's position is that the only appropriate unit for purposes of a representation election is one consisting of all production and maintenance employees engaged in the milling and mining operations at the Seboyeta, New Mexico, uranium operations. In addition, the Employer seeks to ex-

clude all warehouse employees from any production and maintenance unit found appropriate herein.<sup>1</sup> Petitioner urges that the petitioned-for unit is an appropriate one under established Board precedent, and that the failure to direct an election therein prejudicially affects the right of the mill employees to determine whether or not they shall be represented. We find merit in Petitioner's contentions.

The Employer, a Delaware corporation, is engaged in the business of mining and milling uranium ore at its Seboyeta operations, a 300-acre fenced area, located approximately 2-1/2 miles east of Seboyeta, New Mexico. The Employer commenced mining and milling operations in 1976. Both operations reached full production capacity in the beginning of 1978, and at the time of the hearing there were approximately 49 mill employees and 145 to 150 mine employees. Only underground mining operations are carried on at the site of the mine and no labor organization seeks to represent the mining employees. There is no bargaining history for any of the employees involved in this proceeding.

The record discloses that the Seboyeta operations are under the overall supervision of a general manager. Reporting directly to him are: (1) an administrative manager, who oversees personnel, payroll, purchasing, accounting, warehousing, and other administrative matters throughout the site; (2) a safety engineer, who is responsible for all safety aspects at both the mill and the mine; (3) a mill superintendent, who oversees the milling operations; and (4) a mine superintendent, who oversees the mine operations. The general manager exercises final approval of all hirings, firings, promotions, and suspensions of employees.

The entire uranium ore output of the mine is processed in the mill, where it is reduced to uranium oxide and then sold to customers in a form commonly known as "yellowcake." The Employer's mill, warehouse, and several administrative buildings are grouped together approximately 1,300 feet from the mine and an additional administrative building. The water supply for both mine and mill is located in the mill area. A power station, maintenance shop, and warehouse supply service, equipment, and materials to both the mill and the mine.

The mine and mill employees work the same shift hours and are subject to the same disciplinary, absentee, and sick leave rules, and have the same health, disability, insurance, and retirement benefits

<sup>1</sup> At the hearing, the Petitioner indicated that it would not proceed to an election if the Regional Director decided to include both mining and milling employees in the same unit. Thus, in ordering that the petition be dismissed, the Regional Director made no finding on whether the warehouse employees were properly included in a unit of mill employees.

and probationary period. Pay practices and benefits are administered centrally by the Employer and the pay rates for mine employees are somewhat higher than those for the mill employees, with the differential being based on the hazardous nature of underground mining. In addition, approximately one-third of the mine employees work on a "contract basis," which is a system of incentive pay in addition to their regular hourly rate. The mill employees work only on an hourly basis.

The record also discloses that the mine and mill employees enter the Seboyeta site through the only gate in the fence, but then proceed separately thereafter. They park in separate parking lots, punch in at separate timeclocks, change in separate locker rooms, eat in separate areas, and work in separate areas. There is almost no daily contact between the mine and mill employees. Both groups use certain equipment, such as pickup trucks and forklifts, on an equipment pool basis. The equipment, however, is driven by mine employees when used in the mine area and by mill employees when used in the mill area.

In addition to the above differences it is noted that the mine employees work underground where they wear special protective equipment. Mill employees process the ore from the mine, using various caustic chemicals. A safety handbook is provided for all employees, but it includes separate sections dealing with mine safety and mill safety, and there are separate mine and mill safety meetings. Moreover, mill employees are provided with an employee handbook prepared under the direction of the general manager which mine employees do not receive.

As for interchange between the underground mine employees and the mill employees, the record reveals that during the 20 months leading up to the hearing in this proceeding, when joint mine and mill operations were engaged in, there were only six to eight permanent transfers between the mill and mine employees. Of the three transfers described in the record, two appear to have involved a termination prior to transfer with a resultant loss of continuity of service for fringe benefit purposes. Finally, the record indicates that there are only isolated instances of temporary employee interchange between the mine and the mill.

In dismissing the petition, the Regional Director relied on *Exxon Company, U.S.A., Highland Uranium Operations*, 225 NLRB 10 (1976), where the petitioner sought to represent in a single unit both mill and surface mine employees, while excluding the underground mine employees. The Board denied the Petitioner's requested unit and included the underground mine employees in one overall unit. How-

ever, certain factors present in *Exxon, supra*, such as considerable interchange of jobs among employees and frequent contact both on and off the job among all employees on a daily basis, are not present in this case.

Moreover, it is well settled, that a petitioned-for unit need not be the most appropriate unit or the most comprehensive unit among a grouping of employees. The Act only requires that it be an appropriate unit which will "assure to employees the fullest freedom in exercising the rights guaranteed by this Act."<sup>2</sup> *Motts Shop Rite of Springfield, Inc., and Motts Shop Rite of Chicopee, Inc.*, 182 NLRB 172 (1970), and cases cited therein at fn. 3; *Morand Brothers Beverage Co., et al.*, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (C.A. 7, 1951). Although it is apparent in this case that there are some factors to support a finding that a unit encompassing all mine and mill employees, whether working underground or on the surface, is appropriate, it is equally clear that the mill employees form a homogeneous grouping of employees who have a sufficient community of interest to justify their establishment in a bargaining unit apart from the underground mine employees. In support of our finding of a separate community of interest for the mill employees, we rely on the following factors: (1) the requested employees work separate and apart from the mine employees; (2) the different conditions under which they work; (3) the lack of contact between the two groups; (4) the *de minimis* nature of employee interchange between the two groups; (5) the lack of supervisory interchange; (6) the absence of any collective-bargaining history at the site; and (7) the fact that no labor organization is seeking to represent the mine employees of the Employer. Accordingly, we conclude that the mill employees share a separate and distinct community of interest apart from the mine employees and constitute a unit appropriate for the purposes of collective bargaining.

Remaining for consideration is the placement of three warehouse employees who work in and around the warehouse located in the mill area of the site. The Petitioner would include these employees in the unit, whereas the Employer would exclude them contending, in effect, that they are clerical employees who do not share a community of interest with the other production and maintenance employees on the site. The warehouse employees are under the supervision of the administrative manager. They do not punch a timeclock and are salaried rather than paid hourly as are the mill employees. However, they receive the same fringe benefits as do all other employees. Their job functions include receiving goods and materials,

<sup>2</sup> Sec. 9(b).

binning and inventorying supplies while in the warehouse, and dispatching goods and materials to all areas of the site as needed. Based upon the above and the record as a whole it is clear that the warehouse employees are predominantly engaged in duties related to the inventory and production of the Employer, and their interests are closely allied with those of the mill employees engaged in production and maintenance and we shall include them in the unit found appropriate. See *Akron Telerama, Inc., d/b/a Akron Cablevision*, 191 NLRB 4, (1971); *Girton Manufacturing Company, Inc.*, 129 NLRB 656 (1960).

We therefore find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of

Sections 9(c)(1) and 2(6) and (7) of the Act, and that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance and warehouse employees employed in the milling and other surface operations at the Employer's uranium operations near Seboyeta, New Mexico; but excluding all mine employees, office clerical employees, professional and technical employees, guards, watchmen, and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]