Etna Equipment & Supply Co., Inc. *and* John R. Heck, Petitioner, and United Mine Workers of America. Case 6–RD–583

July 17, 1978

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer F. J. Suprenant on March 3 and 8, 1978. Following the hearing, pursuant to hearing, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Employer and the Union filed briefs.

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 reviewed the Hearing Officer's rulings made at the hearing and finds they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner, an employee of the Employer, asserts that the Union, which has been certified as the exclusive bargaining representative of the employees designated in the petition, is no longer their representative as defined in Section 9(a) of the Act.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The Petitioner seeks a decertification election in the contractual unit for which the Union is the currently certified bargaining agent. That unit includes all the production and maintenance employees at the Employer's sites in Bentleyville and Beallsville, Pennsylvania.

The Union contends that the certified unit has been merged into a larger unit and therefore is not the appropriate unit. Additionally the Union contends that the individual Petitioner is a supervisor and therefore the petition should be dismissed. The Union also argues that employee Rebarick is a sporadic part-time employee who does not share a community of interest with the other employees and consequently should not be considered in Petitioner's showing of interest.

For the reasons below we find these contentions to be without merit and shall direct an election.

The Employer is engaged in strip mining and nonretail sale of coal at various sites in western Pennsylvania. The Union was certified as the exclusive collective-bargaining representative in May 1975 and has negotiated one collective-bargaining agreement which was signed in July 1975 and expired in December 1977. On April 29, 1976, the Employer joined the Bituminous Coal Operators Association (BCOA).

The Union contends that when the Employer joined the BCOA the certified unit was merged with all employees of BCOA members. However, there is no evidence that the Employer intended to engage in or be bound by multiemployer bargaining. Indeed, it did not join the BCOA until approximately 10 months after it had negotiated its contract with the Union. All evidence indicates that contract administration and collective bargaining have taken place on a single-employer basis.

Absent evidence of an irrevocable intent to be mutually bound in a larger collective-bargaining unit, the Board will not infer a merger.[1] The fact that the agreement negotiated between the Employer and the Union was substantially similar to that negotiated by the Union and the BCOA, without more, is not enough reason for the Board to conclude that the Employer is part of a multiemployer bargaining unit.[2] This is especially true where, as here, the Employer joined the BCOA after it had negotiated a separate agreement.[3]

The Union also contends that the petitioned-for unit is too narrow because it does not include employees of other companies who work close to the certified-unit employees. These companies apparently are controlled by the same individuals who control the Employer in this case. But even aside from the fact that those employees are represented by other labor organizations, these circumstances provide no reason for suggesting there has been an accretion.[4]

The Union also argues that the petition should be dismissed because the individual Petitioner is a sup-

[1] *Duval Corporation*, 234 NLRB 160 (1978).

[2] *International Photographers of the Motion Picture Industries, Local 659 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (MPO-TV of California, Inc)*, 197 NLRB 1187 (1972), enfd. 477 F.2d 450 (C.A.D.C., 1973), cert. denied 414 U.S. 1157 (1974).

[3] See *U.S. Pillow Corporation*, 137 NLRB 584, 586 (1962).

[4] See *The Great Atlantic and Pacific Tea Company (Family Savings Center)*, 140 NLRB 1011 (1963); *Woolwich, Inc.*, 185 NLRB 783 (1970).

ervisor. The Petitioner, Heck, is classified as a welder under the collective-bargaining agreement. He performs unit work, has union dues and fees deducted from his wages, and receives wages and benefits in accordance with the agreement. Heck possesses none of the traditional indicia of a supervisor. His only duty distinguishing him from other unit employees is administering a welding test to applicants. Heck then compares the applicant's welding ability with his own and reports the results to his supervisors, who make the hiring decision. If anything, this is an indication of expertise, not supervisory status. We therefore find that Petitioner is not a supervisor.

The Union argues that Rebarick, a cleaner-janitor, lacks a community of interest because of his allegedly irregular employment [5] and therefore should not be considered in Petitioner's showing of interest. He was employed in 1976. The Union was informed when he was hired and accepted his classification in the unit. Except for seasonal layoffs he has consistently worked a 7-hour shift at least 2 or 3 days a week. In view of the fact that Rebarick worked a substantial number of hours on a regular basis over the past 2 years, we find that Rebarick is a regular part-time employee with a sufficient community of interest with the full-time employees and should be included in the unit.[6]

On the basis of the foregoing we shall direct an election in the following appropriate unit:

> All production and maintenance employees of the Etna Equipment and Supply Company, Inc., Etna Strip Mine, Bentleyville, Pennsylvania, and Etna Equipment and Supply Company, Inc., Beallsville, Pennsylvania, excluding over-the-road truckdrivers, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

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

[5] The Union does not contend that Rebarick, who works at the same sites as the other employees, otherwise lacks a community of interest with them.

[6] The showing of interest is an administrative matter not subject to litigation. *General Dynamics Corporation, Convair Division*, 175 NLRB 1035 (1969). We are administratively satisfied that the Petitioner has an adequate current showing of interest.