

New York Trap Rock Corporation, Petitioner and Local 445, International Brotherhood of Teamsters and International Union of Operating Engineers, Local 825, 825A, 825B, AFL-CIO and Laborers International Union of North America, Local 60, AFL-CIO. Cases 3-UC-251, 3-UC-252, and 3-UC-253

23 September 1987

**DECISION ON REVIEW AND ORDER
CLARIFYING UNITS**

**BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND BABSON**

On 15 June 1987 the Acting Regional Director for Region 3 issued a Decision and Order in the above-entitled proceeding in which he dismissed the Employer Petitioner's unit clarification petitions which sought to exclude its two nonexistent facilities at Newburgh and Cedar Cliff, New York, from the parties' unit scope provisions of their collective-bargaining agreements. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer Petitioner filed a timely request for review of the Acting Regional Director's decision on the grounds, *inter alia*, that the Acting Regional Director erred by applying the principles set forth in *Batesville Casket Co.*, 283 NLRB 795 (1987), and by failing to clarify the units in the particular circumstances of this case.

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 case with respect to the issue under review and makes the following findings.

We agree with the Employer Petitioner and grant its request for review and clarify the units for the reasons expressed below. Approximately 50 years ago the Employer Petitioner extended voluntary recognition to the above-named Unions, which represented employees at one or more of the Employer's crushed stone, stone quarry, or dock facilities in New York State. In 1978 the Employer closed its Newburgh facility, which employed four employees, all of whom were represented by the Operating Engineers. At an unknown date in the mid-1970s, the Employer closed the Cedar Cliff facility.¹ From the time Newburgh and Cedar Cliff closed, the unit descriptions in successive collective-bargaining agreements, including those which expired on 31 May 1987,² have continued expressly

to include these closed facilities. During negotiations for new contracts to succeed those expiring on 31 May, the Employer proposed to limit the scope of jurisdiction to its active and functioning locations at Clinton Point and West Nyack. The Unions refused, and the Employer filed the instant unit clarification petitions.

Relying on the Board's recent decision in *Batesville Casket*, supra, which held that a unit clarification petition is not appropriate for upsetting an agreement or an established practice concerning unit placement of employees or classifications, the Acting Regional Director dismissed the instant petitions noting that the Board refused to clarify "an existing long established unit" in *Batesville Casket* where there had not been any *recent* substantial changes. Accordingly, finding that Newburgh and Cedar Cliff had been closed for approximately 10 years and the parties thereafter have continued to adhere to a unit description that included those closed facilities, the Acting Regional Director concluded that, in the absence of recent changes or other compelling circumstances, clarification of the units as sought by the Employer Petitioner was not warranted. We disagree and, in accord with the Employer's contention, find that reliance on *Batesville Casket* is misplaced.

Unlike the instant case, *Batesville Casket* involved ongoing operations in an existing single unit which had endured a long history of collective bargaining. The organizational changes which the petitioner therein claimed had rendered the single unit no longer appropriate occurred 30 years earlier. By contrast, the issue here is not whether an existing single unit should be divided; instead, it is whether the unit descriptions should be clarified because they include facilities which no longer exist. Moreover, there are no employees at these closed facilities to represent. The dock facility formerly operated by the Employer in Newburgh was closed in 1978 and its stone quarry at Cedar Cliff ceased operations several years earlier. Since no employees have been employed at these facilities for approximately 10 years, clarification to exclude the two locations would not disturb collective bargaining, and we find no reasonable basis to maintain the former "historical unit" as described in the collective-bargaining agreements. While the closures in this case were not recent, neither that fact nor bargaining history is relevant in these circumstances. Any community of interest which once may have existed among all the employees at the four plants no longer exists in the absence of employees at the

¹ At the time of that closing, the representation of the remaining 10 employees there was divided among the three Unions

² All dates are in 1987 unless stated otherwise

Newburgh and Cedar Cliff locations.³ Thus, compelling circumstances warrant clarification of the unit scope clause of the parties' contracts to exclude the Newburgh and Cedar Cliff facilities. Accordingly, the unit clarification petitions are rein-

³ We express no view with regard to the assertions in the Employer's brief as to the possible effect of a reopening, if any, of the Newburgh and Cedar Cliff locations

stated and we shall clarify the units as requested by the Employer Petitioner.

ORDER

It is ordered that the contractual units in the collective-bargaining agreements of the parties herein be clarified to exclude the Employer's former facilities at Newburgh and Cedar Cliff, New York, from the unit descriptions.