

P. J. Dick Contracting, Inc.¹ and International Union of Operating Engineers, Local No. 66, AFL-CIO. Case 6-RC-9850

July 29, 1988

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS JOHANSEN, BABSON, AND CRACRAFT

On July 16, 1987, a hearing was held before Hearing Officer Mark E. Wirick. Pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, the Regional Director for Region 6 transferred this proceeding to the Board for determination of an appropriate bargaining unit. The Petitioner and the Employer filed briefs.

On the entire record, the Board finds

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Formed in 1979, the Employer is engaged in building construction. It joined the Master Builders Association (MBA), a multiemployer bargaining association, and assigned it bargaining rights. The MBA entered a series of 8(f) prehire agreements with the Petitioner in 11 Pennsylvania counties. The Petitioner seeks an election to establish its status as majority representative under Section 9(a).

The record consists of stipulated evidence. No oral testimony was offered. The only point of contention between the parties is the scope of an appropriate bargaining unit.

I. CONTENTIONS AND STIPULATIONS

A. The Petitioner

The Petitioner contends the Employer's operating engineers² working within its 33 county International Union's geographic jurisdiction constitute an appropriate unit. According to the Petitioner, the Employer performs the majority of its work in Allegheny County, Pennsylvania. However, because of expanded operations, an operating engineer can reasonably expect employment with the Employer in all 33 counties.

¹ Name as amended at the hearing

² For ease of reference, all the Employer's operators of heavy equipment, oilers, mechanics, and mechanic's helpers shall be referred to as "operating engineers"

Alternatively, the Petitioner requests a unit composed of the Employer's operating engineers working within the 11 counties of the current MBA agreement. It asserts that the bargaining history of this unit illustrates an established and operational relationship and should be preserved. Additionally, according to the Petitioner, the parties' 8(f) prehire agreement is currently enforceable in all 11 counties of the current MBA jurisdiction. Finding this unit appropriate, contends the Petitioner, merely continues the existing voluntary relationship.

B. The Employer

The Employer's primary proposal for an appropriate unit is one limited to the operating engineers employed by it in Allegheny County where it performs the majority of its contracts. The Employer contends that work performed in other counties is sporadic and insignificant. Working on those projects, the Employer insists, does not provide an operating engineer with a reasonable expectation of future employment. The Employer maintains that the scope of an appropriate bargaining unit is controlled by the presence of a core group or common nucleus of employees. Only where this core group is present, argues the Employer, is an election a barometer of future employee choice of bargaining representative, permitting broad geographical units.

The Employer alternatively proposes a unit composed of its operating engineers working within the counties of the current MBA agreement, where it has performed projects since 1985.

C. Stipulations

The parties stipulated to the following relevant facts.

1. The operating engineers not employed on a project-by-project basis possess sufficient continuity of interest to merit continued reliance on the results of an election.
2. The Employer's operating engineers are hired exclusively through the Petitioner's referral system.
3. The Employer uses a core group of operating engineers on projects performed in the 11 counties of the current MBA agreement.
4. Because of the Employer's common wages, hours, centralized control of labor relations, and other terms and conditions of employment, voter eligibility is determined by the rule of *Daniel Construction Co.*³

³ 133 NLRB 264 (1961) Accordingly, we direct that in addition to those in the unit who were employed during the payroll period immediately preceding the date of the Decision and Direction of Election, all employees in the unit who have been employed for a total of 30 days or more within the period of 12 months, or who have had some employ-

Continued

5. The number of operating engineers varies substantially during each job and no readily available records exist which show the number of employees on each site or the duration of their employment.

II. ANALYSIS

Determination of an appropriate bargaining unit is guided by the objectives of ensuring employee self-organization, promoting freedom of choice in collective bargaining, and advancement of industrial peace and stability. These objectives are realized when the members of an appropriate unit share, inter alia, a community of interest in wages, hours, and other terms and conditions of employment.

Board inquiry pursues not the most appropriate or comprehensive unit but simply *an* appropriate unit.⁴ Once this unit is determined, the requirements of the Act are satisfied. The inquiry first considers the petitioning union's proposals.⁵ If the union's proposed unit is inappropriate, the employer's proposals are then scrutinized. Factors relevant to appropriateness are the similarity of skills, functions, and working conditions throughout the proposed unit; the central control of labor relations; transfer of employees among the Employer's other construction sites; and the extent of the parties' bargaining history.⁶ Units with extensive bargaining history remain intact unless repugnant to Board policy or interfere with rights guaranteed by the Act.⁷

The Petitioner proposes a unit which includes all 33 counties within its geographical jurisdiction. However, the limited evidence introduced by the Petitioner at the hearing provides inadequate support under the above-listed factors for this proposed unit. Without supporting evidence, we cannot find the Petitioner's proposed 33-county unit appropriate.⁸

The Petitioner's alternative unit proposal of the 11 counties of the current MBA agreement is an appropriate unit. It is significant that the parties

have bargained in this unit, albeit through a bargaining association, since 1979. The Employer recognized the Petitioner as the 8(f) bargaining representative of its operating engineers and used its hiring halls exclusively.

Reliance on 8(f) bargaining history is supported by our decision in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. 843 F.2d 770 (3d Cir. 1988). Although that case concerned an alleged unfair labor practice not present here, the Board enumerated several principles relevant to representation issues, including the statement that:

[8(f)] agreements will not bar the processing of valid petitions filed pursuant to Section 9(c) and Section 9(e) . . . [and] in processing such petitions, the appropriate unit normally will be the single employer's employees covered by the agreement⁹

We further noted, in *Deklewa* at fn. 42, that existing eligibility and election rules would be applied to the extent feasible. Accordingly, the Board's traditional deference to bargaining history is generally applicable in the construction industry. Indeed, based on the limited evidence presented, it is the determinative factor in finding in this case that the 11-county jurisdiction of the MBA agreement is an appropriate unit.¹⁰

Finding the 11-county unit of the current MBA agreement an appropriate unit ends the inquiry. We do not reach the Employer's proposals.

III. CONCLUSION

We find the following unit appropriate for the purpose of collective bargaining within the meaning of Section 9(a) of the Act:

All operators of heavy equipment, oilers, mechanics and mechanics' helpers, employed by the Employer within the 11 Pennsylvania counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Green, Indiana, Lawrence, Mercer, Washington, and Westmoreland, excluding: office clerical employees, guards and supervisors as defined in the Act, and all other employees.

[Direction of Election omitted from publication.]

ment in that period and who have been employed 45 days or more within the period of 24 months, immediately preceding the eligibility date for the election hereinafter directed shall be eligible to vote *Daniel Construction Co.*, 133 NLRB at 269

⁴ *Morand Bros Beverage Co.*, 91 NLRB 409 (1950)

⁵ *Marks Oxygen Co.*, 147 NLRB 228 (1964)

⁶ *Metropolitan Life Insurance Co.*, 156 NLRB 1408 (1966)

⁷ *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549 (1965)

⁸ We emphasize that we have not found that this proposed unit is necessarily inappropriate. Such a finding is simply not warranted based on the limited record.

⁹ 282 NLRB at 1377

¹⁰ Historically, the Board has not defined the scope of an appropriate bargaining unit in geographic terms. However, as each of the Petitioner's proposed units are so described, we give deference to this terminology.