

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE
SUBREGION THIRTY-THREE

RIVERSTONE GROUP, INC.
Employer,

and

25-RD-105145

JOSHUA DAVID BALLAGEER
Petitioner,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 150
Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on May 24, 2013, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine the appropriate unit in which the decertification election will be held.¹

I. ISSUE

The Petitioner seeks a decertification election within a unit comprised of the approximately seven individuals employed by the Employer at its Cleveland Quarry facility located in Cleveland, Illinois. The Petitioner and the Employer contend that the employees at the Cleveland Quarry facility constitute the appropriate bargaining unit for the decertification petition because they constitute a separate and distinct bargaining unit and have been recognized as such in multiple, successive collective bargaining agreements between the Employer and the

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. 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.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Intervenor. The Intervenor contends that the employees at the Cleveland Quarry facility are part of a larger multi-facility unit consisting of approximately 32 employees at five facilities and that its position is supported by the parties' bargaining history.

II. DECISION

For the reasons discussed in detail below, it is concluded that the Cleveland Quarry facility unit previously recognized was not merged into a larger unit 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, service and maintenance employees used in the operation of power drive equipment, which is recognized as being within the jurisdiction of the I.U.O.E., at the Employer's Cleveland Quarry, but excluding office clerical, guards, supervisors and professionals as defined in the National Labor Relations Act, as amended

III. STATEMENT OF FACTS²

The Employer is engaged in the production of crushed stone and gravel. The Employer operates several facilities in Illinois and Iowa but its main office is located in Moline, Illinois. The Moline office contains the Employer's management, sales and human resources employees. The Employer's Vice-President of Operations is Marshall Guth, and he reports to the Employer's President Oscar Ellis. Guth oversees the operation of the various Employer facilities in Illinois and Iowa.

The Employer operates five facilities in Illinois which are relevant to the instant matter. These facilities are Cleveland Quarry, Midway Stone, Allied Stone, Cordova Dredge and Moline Yard. Each of these five facilities has a superintendant who is responsible for the day to day operation of their respective facility, and each of the superintendants reports to Marshall Guth. The superintendants interview and hire applicants for employment although the decision on whether a facility needs another employee is made by the Employer's central office in Moline. None of the five facilities are separately incorporated but are considered separate divisions of the Employer.

The Employer manufactures crushed stone at Cleveland Quarry, Midway Stone, and Allied Stone. Cordova Dredge is a dredging operation that digs sand and stone out of the Mississippi River. Materials produced at these four facilities are then sent to the Moline Yard

² On June 7, 2013 the Employer filed a motion to reopen the record in this matter. That motion is hereby denied. The documents which the Employer asked to add to the record are of little evidentiary value and, for the reasons discussed herein, are unnecessary to make a decision in this case.

where those materials are sold to customers. Certain employees at all five facilities are represented by the Intervenor and have been since the 1960s.³

The Employer and the Intervenor maintain separate contracts for all five of the above facilities, and this has been the practice since the 1960s. The contracts are negotiated simultaneously with a single team representing the Employer and a single team representing the Intervenor at the negotiations. Before new contract negotiations begin, it has been the practice of the Intervenor to call a single meeting for all of the represented employees at the five facilities. The purpose of this meeting is to discuss the goals of the upcoming negotiations and to solicit employee input. After the negotiations conclude, the Intervenor holds a single ratification vote among the employees at all five facilities for the ratification of the five contracts. There is no evidence that either party ever suggested negotiating a single contract to cover all five units.

As set forth above, the parties negotiate simultaneously for five separate contracts to cover the five separate facilities involved in this matter. The most recent collective-bargaining agreement for Cleveland Quarry is effective from May 3, 2010 to May 3, 2015. That agreement states that it is between Cleveland Quarry, a Division of Riverstone Group, Inc. and the Intervenor, Local Union. No. 150, International Union of Operating Engineers. The recognition clause of that contract reads as follows:

The Company recognizes the Union as the exclusive bargaining agency for all production, service and maintenance employees used in the operation of power drive equipment, which is recognized as being within the jurisdiction of the I.U.O.E., but excluding office clerical, guards, supervisors and professionals as defined in the National Labor Relations Act, as amended.

The recognition clause does not contain any geographical description of the work covered. When prior collective bargaining agreements at the five facilities have expired, the Union has sent five separate notices to the Employer requesting bargaining and to Federal Mediation and Conciliation Services regarding the upcoming negotiations. On several occasions in the past, the Employer in correspondence with the Intervenor has referred to the negotiations for the five collective bargaining agreements to cover the five Illinois facilities as the “Illinois Quarry Negotiations,” and it is common for the parties to refer to the five facilities as the “Illinois Quarries.”

IV. DISCUSSION

As set forth above, both the Petitioner and the Employer contend that the appropriate unit in this matter is the unit set forth in the collective-bargaining agreement between Cleveland Quarry and the Intervenor. This unit would consist of the approximately seven employees employed by the Employer at its Cleveland Quarry facility and represented by the Intervenor.

³ The Employer also has two other facilities in Illinois, Troy Grove Quarry and Vermillion Quarry, as well as five facilities in Iowa which have employees represented by the Intervenor. None of the parties have made any claim that the employees at any of these facilities should be included in the appropriate unit in this matter.

The Intervenor argues that the employees employed at the Cleveland Quarry location are not an appropriate unit and are actually part of a larger multi-facility unit comprised of approximately 32 employees at five different facilities.

It is well established Board policy that the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized unit. Campbell Soup Co., 111 NLRB 234 (1955); W.T. Grant Co., 179 NLRB 670 (1969); Bell & Howell Airline Service Co., 185 NLRB 67 (1970); WAPI-TV-AM-FM, 198 NLRB 342 (1972); and Mo's West, 283 NLRB 130 (1989). The evidence in the instance case clearly supports the position that the recognized unit is the employees employed at the Cleveland Quarry facility. Those employees have their own collective bargaining agreement that clearly indicates it is between Cleveland Quarry and the Intervenor. The employees at the other facilities who the Intervenor argues are also part of the appropriate unit in this matter also have contracts that specifically cover their respective facilities and are part of separate and distinct bargaining units.

This position is supported by the Board's decision in Metropolitan Life Insurance Company, 172 NLRB 1257 (1968). In that case the union was the certified bargaining representative of two different groups of employees employed by the same employer. One was in Minnesota and the other in Wisconsin. The employer and the union negotiated contracts for both units simultaneously with a single group representing both bargaining units and the terms of the two contracts were identical. Following negotiations, the union submitted the new contract to a combined ratification vote in the two units. A decertification petition was filed involving the Wisconsin employees, and the union argued that over the course of 25 years of simultaneous negotiations, the two units had been merged and thus the Wisconsin employees no longer constituted the appropriate unit. The Board disagreed and held that there had been no merger and directed that an election take place in the Wisconsin unit. The Board relied on the fact that there had always been two separate contracts for the unit and that the contracts were never altered to indicate that there was now a single bargaining unit.

The above rationale also applies to the instant case. The parties have continuously negotiated five separate contracts including the contract covering employees at the Cleveland Quarry facility. There is no evidence that the language of the contracts has ever been altered to indicate that said contract applies to a single combined unit rather than five separate units. In addition, the employer in Metropolitan Life printed both contracts in a single booklet, and the union sent a single notice of bargaining covering both units. Id. at 1258 In the instant case, the contracts have never been joined in any way, and the Intervenor sends out five separate notices covering each unit to both the Employer and Federal Mediation and Conciliation Services. This further supports the position that the units have not been merged and that the employees at the Cleveland Quarry facility are the appropriate unit in this matter.

The Intervenor argues that based on the parties' bargaining history, the Employer and Intervenor have effectively brought about a merger of the individually recognized units into a multi-facility unit, therefore, the petition should be dismissed as seeking to decertify only a portion of the appropriate unit. In support of its position the Intervenor cites the Board's decisions in Wisconsin Bell, Inc. 283 NLRB 1165 (1987) and Green-Wood Cemetery 280 NLRB 1359 (1986) as examples of the Board dismissing decertification petitions because the sought-

after unit was part of a larger unit. However, in Wisconsin Bell, Inc. the parties explicitly reached an agreement merging the employees sought in the petition into the larger unit set forth in its collective-bargaining agreement. Additionally, in Green-Wood Cemetery, the board affirmed the Regional Director's dismissal of a petition seeking to decertify only the employer's office clerical employees, based on the fact that the parties had executed collective bargaining agreements containing a merged recognition clause for the employer's field and office clerical employees. The Board has consistently held that a merger of units will not be found "in the absence of unmistakable evidence that the parties *mutually* agreed to extinguish the separateness of the previously recognized or certified units." Duval Corporation, 234 NLRB 160, 161 (1978). No such agreements to merge the separate units are present in the instant case. In contrast, the parties have negotiated a single contract for the five Iowa facilities as well as a single contract for the two other Illinois facilities, Troy Grove Quarry and Vermillion Quarry.

The Intervenor also argues that the employees at the Cleveland Quarry are not the appropriate unit based on community-of-interest standards. However, as discussed above, the unit appropriate in a decertification election must be coextensive with either the certified or recognized bargaining unit; hence, community-of-interest factors which would be considered in making an initial appropriate unit determination are not relevant herein. Fast Food Merchandisers, 242 NLRB 8 (1979).

Finally, the Intervenor attempts to argue that the Board's established three year contract bar should be lengthened to five years. The undersigned clearly has no authority to overrule or ignore what even the Intervenor concedes is clear Board precedent. The contract bar applies only for the first three years of a collective bargaining agreement, General Cable Corp., 139 NLRB 1123 (1962), and thus, there is no contract bar in the instant case.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Intervenor. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Subregional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the undersigned to assist in determining an adequate showing of interest. In turn, the list shall be made available to all parties to the election.

To be timely filed, the list must be received in the Subregional Office, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602-1246 **on or before June 20, 2013**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency website, www.nlr.gov,⁴ by mail, or by facsimile transmission at (309) 671-7095. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election please furnish a total of two copies of the list, unless the list is submitted by facsimile or electronically filed, in which case no copies need be submitted. If you have any questions, please contact the Subregional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at

⁴ To file the list electronically, go to the Agency's website at www.nlr.gov, select **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **June 27, 2013**, at 5:00 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁵ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

⁵ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

SIGNED IN Indianapolis, Indiana, this 13th day of June 2013.

A handwritten signature in black ink that reads "Rik Lineback". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Rik Lineback
Regional Director
National Labor Relations Board
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