

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THREE**

W.F. BRUEN RESCUE SQUAD, INC.

Employer

and

Case 03-UC-105668

**UNITED PROFESSIONAL & SERVICE EMPLOYEES
UNION, LOCAL 122**

Petitioner

DECISION AND CLARIFICATION OF BARGAINING UNIT¹

The Employer, W.F. Bruen Rescue Squad, Inc., (“Employer” or “Bruen”) is a New York State not-for-profit corporation that provides ambulance and emergency services to the public pursuant to a contract with the Town of East Greenbush, New York. Sand Lake Ambulance, Inc. (“Sand Lake”) is also a not-for-profit corporation that provides the same services to the residents of the Town of Sand Lake. Sand Lake is an “all volunteer organization” with no paid staff. It has a staffing services agreement with the Employer to supplement its volunteer staff with paid emergency medical technicians and paramedics from the Employer. The agreement provides that the Employer assigns its employees to perform

¹ Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

work required by Sand Lake.

The Petitioner seeks to clarify the certified unit to include the same classifications of employees of the Employer who work at Sand Lake.

The certified unit is:

All paid part-time and full-time Emergency Medical Technicians, Critical Care Technicians, Paramedics, shift supervisors, administrative assistants, and billing specialists employed by the Employer at its 1116 Red Mill Road, Rensselaer, New York facility; but excluding all volunteer personnel, members of the Board of Directors, Medical Director, and Director of Administration and Operations.

The Petitioner was certified as the collective-bargaining representative in the above-described bargaining unit pursuant to an election in Case 3-RC-82072.²

Background and Employer's Operations

The Employer maintains an administrative office at 1116 Red Mill Road, East Greenbush, New York, where it employs paramedics and emergency medical technicians (EMTs). The Employer also employs paramedics and EMTs at the Sand Lake facility, pursuant to the staffing services agreement with Sand Lake noted above. Thus, the Employer's employees work at both the Employer's East Greenbush facility and at Sand Lake's facility.

Employee paychecks at both facilities are designated "W.F. Bruen." Payroll for the Employer's employees at both locations is administered at the 1116 Red Mill Road location. East Greenbush and Sand Lake are both located in Rensselaer County approximately 7.6 miles apart. Daniel Glick is the Employer's Director of Administration and Operations. Three administrative supervisors report to Glick. Two of the administrative supervisors are

² Pursuant to the stipulated election agreement between the Employer and the Petitioner in Case 3-RC-82072, a mail ballot election was held from June 26, 2012 to July 10, 2012, and the certification issued on July 19, 2012.

located at East Greenbush and one at Sand Lake. There are currently approximately 37 unit employees at the East Greenbush facility. The Employer has approximately 14 employees at Sand Lake. Two or three unit employees (EMTs) work regularly at both East Greenbush and Sand Lake. At the Sand Lake facility, Sand Lake's own volunteer paramedics and EMTs are assigned to specific shifts, then paid emergency staff furnished by the Employer fill in the schedule, as needed. At East Greenbush, the Employer's paid staff at that location is scheduled first, then volunteers and the Employer's Sand Lake employees are utilized to fill in the remaining openings in the schedule, as described below.

The Employer's employees who work out of East Greenbush and Sand Lake utilize an internet-based scheduling website to select their regular shifts at their respective facilities. Employees receive a daily solicitation on the scheduling website to fill-in for open shifts out of either location and shifts are made available interchangeably throughout the company regardless of their location. One of the Employer's Sand Lake employees testified that she receives an almost daily text message from Employer Director Glick to fill in for an empty shift on the East Greenbush schedule caused by illness or an emergency.

The Parties' Positions

The Petitioner contends that the evidence establishes that the parties intended to include employees of the Employer who work out of the Sand Lake facility when they entered into the stipulated election agreement in Case 3-RC-082072. The Petitioner notes that the representation petition listed fifty (50) as the approximate number of employees in the proposed bargaining unit, which matches the approximate total number of employees at both facilities, the Employer furnished an Exclesior list which included the Sand Lake employees, the Employer posted Board Election Notices at both facilities, and that Sand Lake employees voted in the election without

challenge by the Employer. The Petitioner further asserts that the Employer's employees who work at Sand Lake share a community of interest with the employees who work out of the East Greenbush facility.

The Employer contends that it would be inappropriate to include the Employer's employees who work at the Sand Lake facility in the certified bargaining unit consisting of employees who are domiciled at the East Greenbush facility because it asserts that Sand Lake employees do not share a community of interest with East Greenbush employees.

Analysis and Conclusion

In determining whether an individual is included in a stipulated unit, the Board applies a three-part test. Under the test: [T]he Board must first determine whether the stipulation is ambiguous. If the objective intent of the parties is expressed in clear and unambiguous terms in the stipulation, the Board simply enforces the agreement. If, however, the stipulation is ambiguous, the Board must seek to determine the parties' intent through normal methods of contract interpretation, including the examination of extrinsic evidence. If the parties' intent still cannot be discerned, then the Board determines the bargaining unit by employing its normal community-of-interest test. *Caesar's Tahoe*, 337 NLRB 1096, 1097 (2002). Where the parties' intent can be ascertained, the Board will give it effect unless it is "inconsistent with any statutory provision or established Board policy." *Bell Convalescent Hospital*, 337 NLRB 191 (2001).

The sole issue in this case is whether the Employer's employees who work out of the Sand Lake location are included in the unit. The Employer asserts that the stipulated election agreement is not clear as to whether the parties, in stipulating to the language: "all employees...in the classifications...employed by the Employer at its 1116 Red Mill Road, Rensselaer, New York facility," intended the unit to cover the Employer's employees who also

work at Sand Lake. The stipulation neither specifically includes nor specifically excludes the Employer's employees who work at the Sand Lake facility. As noted during the hearing, when asked by the hearing officer whether the bargaining unit included the Sand Lake employees, the Employer stated: "All we've said i[s] I don't have a certification that says W.F. Bruen...at the Sand Lake facility." ...And when we get...something that says that...Then we're okay."

Given the arguable ambiguity in the stipulation, it is appropriate to determine the parties' intent by normal methods of contract interpretation and by examining extrinsic evidence. *Caesar's Tahoe*, supra (Board concluded that the stipulation was ambiguous, and looked at extrinsic evidence of the parties' intent, including the Excelsior list and the testimony of the parties); *Detective Intelligence Service*, 177 NLRB 69 (1969) (Board examined the intent of the parties and concluded that there was an inadvertent error in the stipulation's unit description).

I find that the record as a whole establishes that the parties intended that the bargaining unit include the Sand Lake employees.

The stipulation language covers *all* employees employed by the Employer at its 1116 Red Mill Road, Rensselaer, New York facility. The Red Mill Road address is an administrative office where payroll is administered for *both* East Greenbush and Sand Lake employees. This is consistent with the interpretation that all of the Employer's employees, at both locations, are included. In addition, the stipulation lists job titles common to both locations and does not exclude the Sand Lake employees.

The parties' intent to include the Sand Lake employees is apparent from their conduct leading to the certification of the unit. The Petitioner organized employees of the Employer and filed a representation petition covering a unit of approximately 50 employees, which

corresponds to the total number of employees who work out of East Greenbush (approximately 37) and Sand Lake (approximately 14). The parties thereafter entered into a stipulated election agreement, pursuant to which the Employer furnished an Excelsior list of eligible voters. The Excelsior list contained the names of the employees who work out of Sand Lake as well as the East Greenbush employees. The Employer posted a Notice of Election to eligible employees at both the East Greenbush and Sand Lake facilities. Employees from both locations voted in the election.³ This type of evidence from the representation proceeding is relevant in determining the parties' intent. See, e.g., *The Prudential Insurance Company of America*, 246 NLRB 547 (1979) (Board, in finding that the parties intended to exclude an employee from the unit, noted that the union did not include the position in its petition, or object to the absence of the employee's name from the Excelsior list).⁴

The Employer's conduct after the Petitioner's certification further establishes that it considered the unit to include Sand Lake employees. For example, the Employer's administrative supervisor contacted the Sand Lake union steward in her capacity as the Petitioner's steward to inform her that an employee who worked out of Sand Lake was subject to discipline and asked the steward if she wanted to attend the disciplinary meeting.

In addition, the parties commenced negotiations for a collective-bargaining agreement, during which, in order to avoid a grievance, the Employer discussed and agreed with the Petitioner at the bargaining table about the seniority-list placement of employees at both facilities. Specifically, the parties agreed that one employee who worked out of Sand Lake

³ I take administrative notice of the fact that the Sand Lake employees voted without challenge by the Employer in Case 3-RC-082072.

⁴ In evaluating the evidence from the representation proceeding, I note that the inclusion of the Sand Lake employees on the Excelsior list is not dispositive of the parties' intent. See *Caesar's Tahoe*, 337 NLRB at 1099-1100. Here, however, there is additional extrinsic evidence that supports the conclusion that the parties intended to include the Employer's Sand Lake employees in the unit.

would be placed on the East Greenbush seniority list, and that the other would be placed on the Sand Lake seniority list. While the bargaining committee was comprised of only East Greenbush employees, the Petitioner's negotiator Gary Favro testified that during negotiations the parties negotiated about the "whole group" of Bruen employees -- Sand Lake and East Greenbush. During the first five bargaining sessions there were no issues raised concerning which employees the parties were bargaining over. Thus, in initial bargaining, where important topics of discipline and supervision were discussed, the Employer never took the position that the employees working out of Sand Lake were not in the unit. It was not until a subsequent bargaining session when the Petitioner raised the issue of establishing a common seniority list covering East Greenbush and Sand Lake employees that the Employer asserted, for the first time, that Sand Lake employees were not in the unit.⁵

Finally, in construing the parties' intent, a unit including both facilities is supported by the nature of the Employer's operations. In that regard, as noted above, employees receive a daily solicitation on the scheduling website to fill-in for shifts out of either location and shifts are made available interchangeably throughout the company regardless of their location. Two or three employees work regularly at both facilities, and Sand Lake employees routinely bid on and fill open East Greenbush slots.

I find that the parties' intent to include the Sand Lake employees is evident from the record, including the nature of the Employer's operations, and the Employer's conduct throughout the representation proceeding in Case 3-RC-82072 and at the bargaining table.

Finally, there is nothing in the record that would indicate that a clarification of the

⁵ East Greenbush and Sand Lake employees had raised the issue of a common seniority list at a Union membership meeting. The issue arose in the context of discussing what would occur if the shared services contract was not renewed.

bargaining unit to include the Sand Lake employees with the East Greenbush employees contravenes any provision of the Act or any Board policy. Accordingly, I find that the unit should be clarified to include the employees at the Sand Lake facility.

IT IS HEREBY ORDERED that the collective-bargaining unit represented by the Petitioner be clarified to include the Employer's employees at the Sand Lake Ambulance facility in Sand Lake, New York as follows:

All paid part-time and full-time Emergency Medical Technicians, Critical Care Technicians, Paramedics, shift supervisors, administrative assistants, and billing specialists employed by the Employer at its 1116 Red Mill Road, Rensselaer, New York facility and at the Sand Lake Ambulance facility in Sand Lake, New York; but excluding all volunteer personnel, members of the Board of Directors, Medical Director, and Director of Administration and Operations.

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. The request must be received by the Board in Washington, DC by 5 p.m. EDT **August 9, 2013**.

The request may be filed electronically through the Agency's web site www.nlr.gov⁷ but may not be filed by facsimile.

DATED at Buffalo, New York this 26th day of July, 2013.

/s/Paul J. Murphy
Paul J. Murphy, Acting Regional Director
Third Region
National Labor Relations Board
Niagara Center Building
130 S. Elmwood Avenue, Suite 630
Buffalo, New York 14202

⁷ 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, select **File Case 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.