

Tiffin, OH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

M & B ASPHALT CO., INC.
Employer

and

Case 08-RC-127048

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL NO. 18
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held May 30, 2014, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 10 for and 8 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs,¹ has adopted the hearing officer's findings and recommendations,² and finds that a certification of representative should be issued.

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings. Member Johnson agrees with the Employer that the record demonstrates that the meetings took place on company time, and that there is precedent supporting that meetings with as few as three employees can trigger the *Peerless Plywood* rule, but even such precedent requires an assembly of employees. See, e.g., *Shirks Motor Express Corp.*, 113 NLRB 753, 755 (1955) ("As the Employer permitted Local 107 to talk to the *assembled* night shift employees on company time and property within 24 hours of the instant election, in violation of the *Peerless Plywood* rule, we, in agreement with the Regional Director's recommendations, sustain the Petitioner's objections.") (emphasis added); *Great Atlantic & Pacific Tea Co.*, 111 NLRB 623, 624 (1955) ("On the day of the election, before the arrival of

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Union of Operating Engineers, Local No. 18 and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time equipment operators and paving laborers (operator helpers), employed by M&B Asphalt Co., Inc., at 12525 County Road, Tiffin, Ohio, 44883, but excluding all other employees, including but not limited to, sealing laborers, mechanics and maintenance employees, asphalt plant employees, lab technicians, truck drivers, working foremen, flaggers, office clerical employees, professional employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

Dated, Washington, D.C., December 15, 2014.

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

(SEAL)

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the [National Labor Relations] Board traveling election team, [Employer’s] District Supervisor Harris addressed groups of *assembled* employees during their working hours on company premises...” (emphasis added). There is insufficient evidence that employees were assembled, so as to invoke the rule. See R. Br. at 12 (noting that union representatives “made their rounds” among the individual employees).

² In the absence of exceptions, we adopt pro forma the hearing officer’s recommendation to overrule the Employer’s Objection 1.