

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

SUBURBAN STEEL ERECTORS, INC.

Employer

and

Case 4-RC-20339

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 542, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

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

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 herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. 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.
5. The Employer is engaged in the steel erection business. Its office and yard are, respectively, in Norristown and Mont Clare, Pennsylvania. Most of the Employer's services are performed in Pennsylvania, but some smaller projects are performed in New Jersey. The Petitioner seeks to represent a unit of the Employer's three crane operators, John Macalinski,

Chuck Lenhart, and Michael Showers. The Petitioner would exclude Tom Grill and David Grill because they are brothers of William Grill, the Employer's President and owner, and would also exclude Tom Davenport, Chris Legath, Gerald Lenhart, Todd Wood and Brian Zerfass, the Employer's five foremen based on their claimed supervisory status. The Employer takes the position that the only appropriate unit would consist of its 24 full-time and regular part-time field employees¹ and yard employees.² The Petitioner is unwilling to proceed to an election in a unit other than three-person crane operator unit sought in the petition.

The Employer has seven pieces of heavy operating equipment, including an 80-ton crane, a pick and carry "Broderson" crane, a "P&H" 20-ton all terrain crane, a large forklift also referred to as a lull or JCB, a 12.5 ton boom truck with hoist, and two smaller forklifts.³ Field employees first "shake out" the steel pieces at the job site. They next use one of the cranes or the lull to position steel I-beams as columns of the building being constructed, and other employees bolt the pieces together bridging with tie beams and steel pieces. The employees generally perform either structural or general, miscellaneous iron work. Structural ironwork involves framing the main structure of the building and requires the welding, bridging, connecting, and spreading of bar joists. Miscellaneous ironwork involves placing stairs, rails, beams and other structures in the building's interior. Welding, "raking" and "bull" work is required in both functions. Employees performing the miscellaneous functions perform work requiring more finesse and use power saws, grinders and other small tools. There is interchange between those performing these functions and on going contact at the job sites.

The Petitioner considers crane operation to involve only the boom truck, the pick and carry crane, the 20-ton P&H all terrain crane and the 80-ton crane.⁴ The employees are also called upon to use site equipment owned by other contractors. Tom Cabot, Shane Cowan, David Grill, Bruce Hendrickson,⁵ foreman Chris Legath, Chuck Lenhart, foreman Gerald Lenhart, John Macalinski, Mike Showers, and foreman Todd Wood have operated the cranes or the boom truck. In addition to these 10, Lewis Davenport, foreman Tom Davenport, Tom Grill, Mike McCormick, Jay Smith and foreman Brian Zerfass operate the lull.

The Employer expects its employees to be capable of performing most of the work involved at the job sites, including the operation of forklifts, lulls and small cranes, even if they have not yet had the opportunity to use this equipment. The Employer's foremen test the ability of its employees to use the equipment. The Employer does not expect every employee to know how to operate the large cranes, and does not require them to have received special training as on-the-job training is provided. Pennsylvania does not require operators to possess certificates or licenses, whereas New Jersey requires operators of equipment over 100 feet long to obtain a long

¹ Field employees include equipment operators, ironworkers, foremen and the operator/mechanic/truck driver who, except for the operator/mechanic/truck driver, perform iron work. The field employees also perform some work at the Mont Clare yard.

² Ralph Berkolder is the sole yard employee. He works primarily in the yard operating forklifts and loading or unloading trucks, and occasionally performs field work.

³ The smaller fork lifts can reach heights of 12 to 15 feet.

⁴ Forklifts also lift material, but they do not have hoists or booms associated with crane hoisting operations.

⁵ Hendrickson worked as a crane operator for his prior employer.

boom license,⁶ but only Mike Showers and Chuck Lenhart have this license. The witnesses gave admittedly rough estimates of the percentage of work time spent by employees in operating the cranes and other job site heavy equipment. Chuck Lenhart, was originally hired as an ironworker, but now operates cranes approximately 90 percent of his working time. Mike Showers, spends 80 per cent of his working time operating the cranes. John Macalinski operates all of the equipment including the cranes from 20 to 50 per cent of his working time.⁷ Those spending 30 to 35 per cent of their time using this equipment include Tom Cabot, Shane Cowan, Lewis Davenport, Tom Davenport, Bruce Hendrickson. Mike McCormick spends approximately 40 to 45 percent of his time operating equipment. Foreman Gerald Lenhart spends 45 to 60 percent of his working time operating heavy equipment. Those spending in excess of 60 per cent of their time on the equipment include David Grill and foremen Chris Legath, Todd Wood and Brian Zerfass.

The employees who can operate the cranes do not receive greater compensation than other field employees. The record does not specify the employees' pay or benefit amounts. All of the field employees are paid hourly and there is no difference in the employees' supervision. All of the field employees report to one of the five foremen on various job sites. The five foremen oversee the daily operations of all the field employees and assign work to the employees.

The primary issue is whether the unit sought by the Petitioner is appropriate for collective bargaining. In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine *an* appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150 (1988). In so doing, the Board looks "first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals." *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). The Petitioner's desire is a relevant consideration, but it is not determinative of the appropriateness of the unit. *Florida Casino Cruises*, 322 NLRB 857 (1997); *Airco, Inc.*, 273 NLRB 348 (1984). The Board weighs a variety of factors, including differences in the employees' interests and working conditions, wages or compensation, hours of work and benefits; supervision; degree of dissimilar qualifications, training and skills; differences in job functions; frequency of contact with other employees; work situs of the employees; degree of integration or interchange of work between the classifications; the history of bargaining; and whether the classification at issue is part of an integrated operation. *Overnite Transportation*, 322 NLRB 723, 724 (1996); *Exco Corp.*, 298 NLRB 837, 839 (1990); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

The Board has long held that units in the construction industry may be appropriate on the basis of either a craft unit or departmental unit, or so long as the requested employees are a clearly identifiable and homogeneous group with a community of interest separate and apart from other employees. *Brown & Root Braun*, 310 NLRB 632, 635 (1993); *Dick Kelchner Excavating Co.*, 236 NLRB 1414 (1978); *R.B. Butler Inc.*, 160 NLRB 1595 (1966). While an overall construction employee unit is presumptively appropriate. See *Mariah, Inc.*, 322 NLRB

⁶ The 80-ton crane, the Broderson crane, 20-ton all terrain crane, but only when it has a jib attached to it, are over 100 feet long.

⁷ This range is based on estimates given by the Employer's witnesses and by those who worked with Macalinski during different periods totaling over one month.

586 (1996); *Fish Plant Services*, 311 NLRB 1294, 1297 (1993), the Board has also found appropriate separate units of heavy equipment operators. *W.P. Butler Co.*, 214 NLRB 1039 (1974); *Dick Kelchner Excavating Co.*, supra; *R.B. Butler Inc.*, supra; *Del-Mont Construction Co.*, 150 NLRB 85, 87 (1964). In other circumstances, the Board has found that separate units of crane operators were not appropriate because they did not constitute a well-defined craft or a definable functional group of employees with a community of interest separate and apart from other employees. *International Paper Co.*, 94 NLRB 483, 495 (1951); *Simpson Steel Co.*, 60 NLRB 182, 184 (1945); *Laclede Steel Co.*, 49 NLRB 1116, 1121 (1943); *Sheffield Steel Corp.*, 43 NLRB 956, 959 (1942).

The record shows that all of the field employees share similar working conditions, have regular contact with each other and interchange iron-working duties. The field employees earn the same pay, report directly to the job sites, and operate under common supervision. The Employer expects its employees to be capable of doing many if not most of the filed jobs, including operating the smaller cranes and boom truck. With respect to the three employees the Petitioner considers to be the only true crane operators, the most of John Macalinski's working hours, much of Mike Showers' and even some of Chuck Lenhart's, are spent performing iron work other than crane operation. No employee is exclusively designated as a crane operator, and several employees other than these three operate the Employer's cranes or boom truck. Still others operate the lull, which performs the same positioning function required in the structural aspect of the erection of the buildings. Employees are not required to undergo extensive training, but learn to operate the heavy equipment, including the cranes, on the job. Based on the foregoing, I find that a unit limited to the crane operators is not an appropriate one, *Brown & Root Braun*, supra; *Sheffield Steel Corp.*, supra, p. 184, and that, at a minimum the other employees who operate the heavy equipment, or are capable of doing so, should be included for a unit to be found appropriate herein. The record fails to establish that the crane operators are a skilled and homogeneous group possessing a community of interest separate and apart from other employees. *Id.*⁸

Because the Petitioner does not wish to proceed to an election in any unit other than the three-person crane operator unit it petitioned to represent, and petitioned for unit has been found not to be an appropriate one, the issue concerning the inclusion of David Grill and Tom Grill, as well as the issue concerning the supervisory status of the five foremen, need not be resolved. As I have found that the petitioned-for unit is not appropriate without the inclusion of other field employees, I shall dismiss the petition.

⁸ The instant case is distinguishable from those finding heavy equipment operators to be an appropriate unit. In those cases the operators were either found to be highly skilled based on record evidence or they received special training. *W.P. Butler Co.*, supra; *Dick Kelchner Excavating Co.*, supra; *R.B. Butler Inc.*, supra; *Del-Mont Construction Co.*, supra. Only three of the Employer's cranes require the long boom license to operate in the State of New Jersey, where a minority of work is performed, and all cranes can be operated in the Commonwealth of Pennsylvania without any license. There is an absence of record evidence establishing that the skills required to operate the equipment other than the cranes are different from the skills needed to operate the cranes or boom truck.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

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, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **January 11, 2002**.

Signed: December 28, 2001

at Philadelphia, PA

/s/

DANIEL E. HALEVY

Acting Regional Director, Region Four

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