UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

SYLVANIA MINERALS

Employer

and CASE 7-RC-22002

LOCAL 324, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO

Petitioner

APPEARANCES:

Frank T. Mamat, Attorney, of Detroit, Michigan, for the Employer
J. Douglas Korney, Attorney, of Bingham Farms, Michigan, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as 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[1] in this proceeding, the undersigned finds:[2]

[1] The Employer and Petitioner filed briefs, which were carefully considered.
[2] After the close of the hearing, the Employer filed a Motion to Correct Transcript and/or Stipulate to Correct Facts based on assertedly mistaken testimony from the Employer's Vice President of Operations Dan Clark as to the uniforms of the shop and quarry employees being the same. Since the transcription of Clark's testimony is accurately reflected in the record, the Employer's motion is denied. To the extent the Employer seeks to reopen the record by its motion, the request is denied since the Employer clearly had the opportunity at the hearing to correct any mistaken testimony by its witnesses. In any event, even if the uniforms of the shop and quarry employees were different, it would not change my finding that the two groups share a sufficient community of interest.

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. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.[3]

4. The Petitioner[4] seeks essentially a wall-to-wall unit of about 21 quarry employees and 15 shop employees employed by the Employer at its quarry site located in South Rockwood, Michigan, where the Employer is engaged in manufacturing sand and limestone products. The Employer maintains that the quarry employees and shop employees do not share a sufficient community of interest so as to form a single unit. [5]

The Employer's operation occupies approximately 600 acres[6], and consists of a shop/garage facility and a manufacturing/mining operation. About 13 mechanics, 2 welders, and 1 lube employee work in the shop, while about 10 equipment operators, 2 plant operators, 4 maintenance employees, 2 crusher operators, and 5 general laborers are employed at the quarry operation.

The quarry operation consists of stripping the overburden that covers the limestone, drilling holes through hard rock, loading rock onto trucks after a contractor blasts the rock into smaller form, hauling the rock out of the quarry to the on-site primary crushers where the rock is reduced to manageable size, processing the rock to various aggregates, stockpiling the rock, and loading the rock onto customer trucks. The quarry maintenance employees maintain the various

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[3] The Employer's motion that the instant petition be dismissed because of the unit description's erroneous reference to "gravel plant operators" is denied. Although the unit I have found appropriate herein does not contain the classification of gravel plant operator because no such classification exists at the Employer's facility, its inclusion in the petition as part of a proposed unit by the Petitioner does not rise to the level of a "willful false statement" as contended by the Employer.

[4] The Employer, despite previously entering into an election agreement with the Petitioner, refuses to stipulate that the Petitioner is a statutory labor organization. The record establishes the Petitioner maintains numerous collective bargaining agreements with other employers, and that employees participate in the affairs of the Petitioner by, among other things, voting on contracts, attending meetings, and paying dues. Accordingly, I conclude that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. See ***Litton Business Systems***, 199 NLRB 354 (1972).

[5] The parties agree that three scale house employees are essentially clerical employees who do not share a community of interest with any of the petitioned-for employees. Accordingly, they are excluded from the unit.

[6] The Employer's operation license is currently limited to 275 acres.

stationary equipment utilized in such operations, including the crushers, screens, and other fixed plant equipment. During the workday, none of these quarry employees works closer than about 1,500 feet from the shop building, although all of the employees enter the worksite at the same location, and punch the same time-clock, which is located in the shop.

The shop operation services and maintains mobile equipment, including quarry vehicles, and also services and maintains the mobile equipment of other companies bearing common or related ownership with the Employer. The shop's mechanics, welders and lube employee perform various repair and maintenance work on said mobile equipment in the garage area of the shop, which has multiple bays to allow ingress and egress of large vehicles.

The quarry operation is under the overall administration of Vice-President-Operations Daniel Clark, who oversees Quarry Manager Claude Seibel, the day-to-day supervisor of the quarry employees. The shop is under the overall administration of Vice-President-Equipment James Patterson, who oversees Shop Manager Frank Kolodziej, the day-to-day supervisor of the shop employees. Kolodziej and Seibel perform their duties on-site, Kolodziej in the shop, Seibel in the quarry. The quarry and shop maintain separate profit and loss statements, and the shop bills the quarry for all work done on the quarry's mobile equipment. This billing includes overhead and profit.[7] Clark and Patterson report to owner Angelo Iafrate, who is located at the main office in Warren, Michigan.[8]

Shop and quarry employees utilize the same parking lot, entrance, and time-clock located in the shop. All of the petitioned-for employees are hourly-rated, weekly paid, punch a time clock, receive paychecks prepared at the main office on the Employer's check stock, receive the same fringe benefits, wear the same uniforms, and work at the same address, although, as noted, the shop employees work indoors in the shop, while quarry employees work outdoors, at some distance from the shop, but on the same general premises. Shop employees eat their lunch in a lunchroom in the shop building, while quarry employees eat in the field. However, notices for both groups are posted in the shop lunchroom.

Shop employees are more highly skilled than the quarry employees and generally perform work unlike the work undertaken by quarry employees, although the quarry's maintenance employees may sometimes perform work on stationary equipment that resembles shop work. There is no temporary or permanent interchange of employees between the shop and quarry operations, although shop

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[7] The controller performs the bookkeeping function of crediting and debiting.

[8] The parties stipulated, and I conclude, that Iafrate, Clark, Patterson, Kolodziej, and Seibel maintain and exercise supervisory authority as defined in the Act, and are excluded from the unit as supervisors within the meaning of Section 2(11) of the Act.

employees repair about 8 to 10 pieces of mobile equipment from the quarry each month.[9] The quarry operates on one shift, with some staggered start times, while the shop operates on two shifts. Both groups are eligible for a safety bonus, while only quarry employees are eligible for newly instituted production and "abuse" bonuses. Bonuses are partially dependent upon the performance of fellow employees within each group, i.e., the production bonus is based on group production, and the safety bonuses are partially dependent on the safety performance of others within each group, but not on the safety performance of employees in the other group. Wages are comparable in the two groups, with quarry wages ranging from $13 to $19.56 an hour, while shop wages range from $15 to $19 per hour.

In 1999, in Case 7-RC-21583, these parties stipulated as part of an election agreement that a unit akin to that sought by the Petitioner herein was appropriate. The Employer, however, contends that the circumstances have changed in that it has administratively separated the quarry and shop operations, with each operation reporting to a separate vice-president and immediate supervisor. There is no other bargaining history at the location involved herein. At the Employer's facility in Rochester Hills, Michigan, the garage employees are represented by a labor organization, while the processing facility employees are not represented.

As maintained by the Employer, many of the above factors, including separate supervision, indicate that separate units of quarry employees and shop employees would be appropriate. However, it is well settled that the unit sought by the Petitioner need not be the only appropriate unit or even the most appropriate unit, but only that it be an appropriate unit. ***Morand Bros. Beverage Co***., 91 NLRB 409, 418 (1950), enf'd 190 F.2d 576 (7th Cir. 1951).

Here, the petitioned-for employees all work for the same employing entity from which they all receive paychecks, share the same fringe benefits, work at the same location, share the same parking lot, punch in on the same time-clock in the shop area, wear the same uniforms, are all hourly rated, and have a limited degree of functional integration in that the shop employees repair the mobile equipment utilized by the quarry employees. Under these circumstances, while it may be argued that separate units are also appropriate or, perhaps, more appropriate than an overall unit, it is also clear that the quarry and shop employees do share a sufficient community of interest so as to render an overall unit appropriate. The fact that certain of the petitioned-for employees have little contact with each other, divergent

[9] This represents less than half of the shop's work. As noted, the shop also performs work for other related companies.

work tasks, and separate supervision does not negate the existence of a community of interest. See, for example, ***Airco, Inc***., 273 NLRB 348 (1984).[10]

5. Accordingly, and for the above reasons, and based on the record as a whole, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

> All full-time and regular part-time shop employees including mechanics, welders, and lube employees, and quarry employees including equipment operators, plant operators, crusher operators, maintenance employees and general laborers, employed at or out of the Employer's facility located at 5699 Ready Road, South Rockwood, Michigan; but excluding professional employees,[11] office clerical employees, scale house employees, and guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan this 25th day of June, 2001.

(SEAL)

/s/ William C. Schaub, Jr.
William C. Schaub, Jr.
Regional Director, Seventh Region
National Labor Relations Board
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

420-2903
420-2915
420-2921
420-7303

[10] The Employer's hearsay testimony that certain quarry employees voiced a desire not to be represented in the same unit with the shop employees is of limited probative value. The desires of employees as to representation by the Petitioner in a single overall unit is best determined by the election process, as herein provided.

[11] The parties stipulated, and I conclude, that the geologist is a professional employee, and should be excluded from the unit found appropriate herein.