

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

WASTE MANAGEMENT OF ILLINOIS, INC.¹

And

CASE 13-RC-21126

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO**

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held December 15, 2003, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. ISSUES

The International Union of Operating Engineers, Local 150, AFL-CIO (herein the Petitioner) seeks an election within a unit comprised of the four full-time and regular part-time leachate technicians and operation specialists who perform leachate field service work at Waste Management of Illinois, Inc. (herein the Employer).

The Employer preliminarily asserts that the entire matter be remanded for further hearing on the basis that the Hearing Officer refused to receive evidence of employees' comparative wages and working conditions.

Substantively, the Employer contends that a unit comprised of leachate technicians and operations specialists who perform leachate field service work is wholly inappropriate because these employees share such an overwhelming community of interest with several other classifications of its employees who are already represented by the International Brotherhood of Teamsters, Local 731, AFL-CIO (herein the

¹ The name of the Employer has been corrected to reflect its full legal name.

² 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.

Teamsters).³ Therefore, the Employer asserts that if the petitioned-for unit is to be represented by a union, it must be represented by the Teamsters.

II. DECISION

For the reasons discussed in detail below, I find that the matter need not be remanded for further hearing. I also find that the petitioned-for unit is an appropriate unit for purposes of collective bargaining. Based on this finding,

IT IS HEREBY ORDERED that an election in the bargaining unit described below be conducted under the direction of the undersigned at a time and place to be set forth in a subsequently issued notice of election:

All full-time and regular part-time leachate technicians and operation specialists who perform leachate field service work at the Employer at its facility in Calumet City, Illinois; but excluding all professional employees, office clerical employees, guards and supervisors, and all employees belonging to unions that have collective bargaining agreements with the Employer.

The unit herein consists of 4 employees for whom no history of collective bargaining exists.

A. Facts

The Employer is engaged in the operation of a 420-acre waste management facility in Calumet City, Illinois, where it disposes of the following materials: municipal solid waste; special waste soils; and hazardous waste materials. In addition, the Employer performs bio-remediation of petroleum-contaminated soils, solidification of waste streams, and treatment of liquids from waste materials. Most of the Employer's facility (360 acres) is made up of four separate landfills.

Unions represent some or all of the employee in three of the Employer's six departments. The Landfill Operations Department contains seven heavy equipment operators who are members of the Petitioner, as well as one driver and five laborers who are members of the Teamsters. The Maintenance Department contains two mechanics and two greasers who are members of the Petitioner. The Biological Liquid Treatment Center (herein the BLTC) contains four bio-liquid operators who are members of the Teamsters.⁴ The remaining four employees in the BLTC are the four-leachate technicians who are at issue in the instant case.

³ Prior to the instant hearing, the Teamsters specifically and in writing disclaimed any and all interest in representing the four-leachate technicians and operations specialists who perform leachate field service work.

⁴ The driver, laborers, and bio-liquid operators are in one unit and covered by a single collective-bargaining agreement between the Teamsters and the Employer.

As the name implies, the employees in the BLTC handle the liquid waste materials at the Employer's facility (whereas the Landfill Operations Department handles the solid waste materials). Leachate is the liquid substance that accumulates at the bottom of the landfills. The four leachate technicians at issue monitor the levels of leachate in each landfill. They are responsible for extracting the leachate from the landfills and pumping it into the BLTC. Inside the BLTC, the four bio-liquid operators treat and process the leachate. Outside the BLTC, the driver and laborers transport waste materials to and from the landfills. The heavy equipment operators perform excavation work on the landfills.

According to the Employer's District Manager Kurt Nebel, the leachate technicians operate independently from the bio-liquid operators and all other employees. They spend 90-95% of their time at the individual landfills outside the BLTC. Each day, they drive company cars to the landfills. The leachate technicians are the only employees who have access to these company cars. They manage the amount of leachate in the landfills, and they check on the various types of pumps that extract the leachate from the landfills to ensure that there are no spills. The leachate technicians do not use the equipment operated by the bio-liquid operators inside the BLTC.

The leachate technicians interact with the other classifications of employees infrequently. Six-year leachate technician Shaun Carpenter testified that he never goes into the BLTC and that he has no interaction with the bio-liquid operators. Carpenter testified that only lead leachate technician Tony Brooks has any interaction with the bio-liquid operators. When Carpenter fills in for Brooks, he converses with the bio-liquid operators about the amounts of liquid in the landfills for about 10-15 minutes daily. Carpenter also testified that the leachate technicians interact with the heavy equipment operators, laborers and drivers only once or twice per week. Likewise, Nebel testified that the leachate technicians interact no more than a total of 5-15% of the time with any of the other employee classifications. Nebel acknowledged that any interaction between the leachate technicians and the bio-liquid operators is "minimal." There was no record evidence showing any interchange between the leachate technicians and any of the other employee classifications.

The leachate technicians have different conditions of employment than the other classifications of employees. The bio-liquid operators, for example, work on two split shifts. All four leachate technicians work one 8-hour shift beginning at 6 a.m. They punch a time clock in the garage, which is shared only with the mechanics and greasers in the Maintenance Department. The leachate technicians also have their own office with a computer and refrigerator. They eat lunch together without any other employees. They are the only employees with access to the computer in their office. The leachate technicians, like the bio-liquid operators, report to Jean LaPlanche, Jr., Manager of the BLTC.⁵ LaPlanche hold weekly meetings for the leachate technicians and the bio-liquid

⁵ The driver and laborers, who are represented by the Teamsters and are in the same unit with the bio-liquid operators, report to Operations Manager Burt Maline.

operators to discuss the status of the BLTC. However, the leachate technicians also hold their own weekly status meetings without LaPlanche.

B. Discussion

1. Hearing Officer's Introduction of Evidence

The Employer asserts that the Hearing Officer did not permit it to introduce evidence comparing the wages or the working conditions of the leachate technicians to the wages and working conditions of the various classifications of Teamsters employees.

As the Employer admits, wages are but one of numerous factors considered by the Board in a community of interest analysis. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). Moreover, as discussed above in Section II (A), the Hearing Officer did permit lengthy testimony regarding the different working conditions of the various classifications of employees. The Hearing Officer received evidence regarding similarities and differences between the leachate technicians and the different classifications of unionized employees in: hours of work; employment benefits; supervision; job functions; contact with other employees; and interchange with other employees.

Even assuming, *arguendo*, that the Hearing Officer should have allowed specific evidence on employees' wage similarities/differences at hearing, I find that the decision not to do so was not fatal and does not warrant a remand. To the contrary, *even assuming arguendo*, that the wages of the leachate technicians are substantially similar to the wages of the Teamsters' employees, I still conclude that the petitioned-for unit has a sufficiently distinct community of interest from other employees to constitute an appropriate unit for the reasons described below.

I find the Employer's reliance on *North Manchester Foundry, Inc.*, 328 NLRB 372 (1999) (pre-election case is remanded to the Regional Director for the purpose of gathering further evidence) is inapposite. In *North Manchester Foundry*, the Hearing Officer did not permit the employer to introduce testimony or evidence concerning the voting eligibility of certain classes of employees. Instead, the Hearing Officer cut short the hearing on the basis that it would best effectuate the Act to hold the election and vote the few disputed classes of employees under challenge. *North Manchester Foundry*, supra at 372-373. In the instant case, the Employer was not precluded from introducing any evidence concerning on the issue of the appropriate unit. To the contrary, the Employer was afforded a fair opportunity to present relevant evidence concerning the leachate technicians' community of interest with other employees of the Employer.

2. Appropriate Unit

Section 9(b) of the National Labor Relations Act directs the Board to "decide in each case whether, in order to assure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective

bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof . . .” “[T]he selection of an appropriate bargaining unit lies largely within the discretion of the Board whose decision, “if not final, is rarely to be disturbed.” *South Prairie Construction v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976). There is nothing in the Act that requires the unit for bargaining be the only appropriate unit or the most appropriate unit – the Act only requires that the unit for bargaining be “appropriate” so as to assure employees the fullest freedom in exercising the rights guaranteed by the Act. *Overnite Transportation Co.* 322 NLRB 723 (1996); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenix Resort Corp.*, 308 NLRB 826 (1992). Moreover, the Board’s procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. *Boeing Co.*, 337 NLRB 152 (2001).

Upon the record evidence herein, I find that the petitioned for unit constitutes an appropriate unit for purposes of collective bargaining in the instant case. The employees in the petitioned for unit have a community of interest sufficiently distinct from other employees to constitute a separate appropriate unit. The four-leachate technicians perform the same duties, use the same equipment and work the same hours. They have their own tight knit community from other employees, having their own office space and eating lunch together without the presence of other employees. They have little contact with other classifications of employees, and the record does not show any interchange between the leachate technicians and other employees. Conversely, the leachate technicians do not perform the same duties, use the same equipment or work the same hours as the other classifications of employees. While there are some common interests with other employees, such as supervision, on balance, the record demonstrates that they have a far greater separate and distinct community of interest from other employees. There is not such a great community of interest among the leachate technicians and the classifications of employees already represented by the Teamsters such that they must be placed into a single unit, as the Employer asserts. Given the present organization of the Employer and the separate units that already exist based on job functions, the petitioned for unit has no more community of interest with any existing units than such units have with each other whether represented by the Teamsters or the Petitioner. Accordingly, based on the foregoing findings and the entire record, I find the petitioned-for unit is an appropriate unit under Board law.

I note that, under the Employer’s theory that the leachate technicians must be included in the Teamster represented unit, the four leachate technicians would be stripped of their Section 7 rights as guaranteed by the Act. As noted above, the Teamsters expressly disclaimed any interest in representing the leachate technicians prior to the instant hearing. Therefore, under the Employer’s argument that the Teamsters must represent the petitioned-for employees in the existing unit, the result is to leave the leachate technicians without possibility of representation at all. Since Section 7 of the Act affords all employees the choice whether or not to be represented by a labor organization and to choose their labor organization, I find the Employer’s argument to be without merit. Similarly, I find the cases cited by the Employer to be factually distinguishable from the findings herein as the petitioned for units in those cases did not

have the separate distinct community of interest of the petitioned for unit herein. Further, those cases did not involve a situation wherein the petitioned for unit could only be represented as a separate unit or not all.

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding 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 is also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Union of Operating Engineers, Local 150, AFL-CIO; or no labor organization.

IV. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

V. LIST OF VOTERS

To insure that all eligible voters 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 directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois 60606 on or before **January 7, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

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. This request must be received by the Board in Washington by January 14, 2004.

DATED at Chicago, Illinois this 31st day of December 2003.

Harvey A. Roth, Acting Regional Director
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