

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

JCIM, LLC

Employer

and

Case GR-7-RD-3634

DAWN MARIE LAMBERT, An Individual

Petitioner

and

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO¹**

Union

APPEARANCES:

Larry S. Perlman, Attorney, of Detroit, Michigan, for the Employer

Glenn M. Taubman, Attorney, of Springfield, Virginia, for the Petitioner

Betsey A. Engel, Attorney, of Detroit, Michigan, for the Union

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations 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,² the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.

¹ The name of the Union appears as amended at the hearing.

² The Petitioner and Union filed briefs which have been carefully considered. In her brief, the Petitioner requests that I take administrative notice of a June 27, 2005 Advice memorandum involving the Employer's predecessor and the Union. As explained in footnote 5, I decline to take such notice.

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.

3. The labor organization involved claims to represent certain employees of the Employer.

4. No 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.

Overview

On December 22, 2008, the Petitioner filed the instant petition for a decertification election concerning a unit of all full-time and regular part-time production and maintenance employees employed by the Employer at 4741 Talon Court S. E., Kentwood, Michigan, hereinafter Talon Court. The Union contends that the petition should be dismissed because the Talon Court unit was merged into a multi-plant unit, comprised of employees from 12 facilities, that is now the only appropriate bargaining unit. The Employer takes no position on this issue.

For the reasons set forth below, I find that that the Talon Court unit has merged with the overall multi-plant bargaining unit covered by the parties' national agreement. As a result, an election only for the Talon Court portion of the overall unit is not appropriate and I shall dismiss the petition.

The Employer's Operations

The Employer is engaged in the manufacture and nonretail sale of plastic parts for the automotive industry. It sells and ships parts to both auto manufacturers and auto parts suppliers. One of the Employer's facilities manufactures blow-molded parts. The other facilities produce plastic-injected molded parts through a simpler production process.

The Employer is a successor to Plastech Engineered Products, Inc., hereinafter referred to as Plastech, which initiated bankruptcy proceedings about the end of January 2008. Johnson Controls, one of Plastech's largest customers, created the Employer, bought some of Plastech's assets, and took over operations of the production plants in July 2008.

The Employer currently has 20 facilities throughout the nation, including three in Kentwood, Michigan. The record identifies these three Michigan facilities as Kentwood, Kentwood warehouse, and Talon Court, the latter the only facility involved in this proceeding. Four or five other facilities have closed since the initiation of bankruptcy proceedings. Other than the transfer of employees from facilities being closed to facilities remaining open, there is no interchange of employees between facilities.

The plant manager at each location reports to one of four regional directors of manufacturing operations. Mike Finch is the director of manufacturing operations for the Grand Rapids Region, which assumedly includes the Talon Court facility. Human resource managers are assigned responsibilities for one or two facilities each. They all report directly to Labor Relations Manager Lance Connoy on labor relations issues. Connoy acts as the lead negotiator for the Employer in all negotiations of local supplemental agreements.

Bargaining History

The record does not reflect how long the Union represented employees of Plastech. However, the parties entered into a five-year national collective bargaining agreement that became effective September 15, 2005.

In March 2007, the Union sought recognition as the bargaining representative of employees at the Talon Court facility. Pursuant to the terms of a neutrality agreement, memorialized in Appendix A of the national agreement, the parties scheduled a joint meeting for employees. Notice of the meeting was posted on a bulletin board and attendance was voluntary.

At the March 2007 meeting, Plastech's Labor Relations Manager Lance Connoy and International Union Representative Dwayne Bolinski explained to the Talon Court employees the terms of the national agreement and that by signing authorization cards for the Union, they would also be showing their consent to be covered by the national agreement. Eight-page Union handouts explaining the national agreement were distributed to the employees in attendance. Copies of the handout translated into Bosnian may have been provided to Plastech's numerous Bosnian employees; copies of the national agreement may have been available for review. Nothing in the record verifies that either actually occurred other than that hearsay statements in this regard were made to the Union's executive assistant, Richard Isaacson, who testified at the hearing.³ Connoy, who was present at the Talon Court meeting, testified that Isaacson's testimony concerning the process in which the Union acquires authorization cards is consistent with his understanding. Connoy's testimony as to the Talon Court meeting in no way conflicts with Isaacson's testimony as to the general process used.

Authorization cards that were collected during and after the meeting were presented to a neutral party, who verified that the Union had majority support of the Talon Court employees. On March 16, 2007, the parties signed an agreement that Plastech would recognize the Union as the collective bargaining representative of the Talon Court employees.

³ The Petitioner testified that she was never provided a copy of the national agreement or told that, upon recognition, the Talon Court unit would be merged into the multi-plant national bargaining unit. However, as she admits that she chose not to attend the March 2007 meeting, her testimony provides little insight as to what information was conveyed to the employees at the meeting.

Pursuant to Article 5 of Appendix A of the national agreement, immediately upon recognition, terms of the national agreement became effective as to the Talon Court employees. They started receiving all enumerated benefits, including health care benefits, life insurance, and a 401(k) plan. Talon Court employees also have access to the grievance/arbitration procedure, although no arbitrations have yet taken place involving the Talon Court employees and there is no evidence that a grievance has even been filed.

Article 16 of the national agreement reserves certain issues, including wages, for local negotiations. The parties had one meeting in mid-December 2007 to bargain over local issues. Plastech's initiation of bankruptcy proceedings in January 2008 postponed further local negotiations for Talon Court and other facilities. Local negotiations for Talon Court have not resumed since that time. Employees at that location are still being paid pursuant to the pay scale established by the Employer.

While Article 5 of the national agreement provides for monthly deductions for union dues, no deductions have yet been made. The Union's International Executive Board has enacted a policy that dues will not be collected from employees until their local supplemental agreement is finalized. This policy has been applied to other of the Employer's facilities.

When the Employer took over Plastech's operations in July 2008, it assumed all the terms of the national agreement. Currently, between 2,100 and 3,000 employees at 12 of the Employer's 20 facilities are represented by the Union and are covered by the national agreement.⁴ Approximately 150 of those employees are employed at the Talon Court facility. Local supplemental agreements have been negotiated for 10 of the 12 facilities.

The National Agreement

Recognition language in Article 2 of the national agreement states, in part:

The Company recognizes the Union as the exclusive bargaining agent for full-time and regular part-time production and maintenance employees employed at Plastech Engineered Products, Inc. but excluding all office and clerical employees, managers, guards, temporaries, contract employees, professional employees and supervisors as defined by the Act, at those locations in which the Union has been established as bargaining representative as of September 15, 2005. Whenever the term

⁴ Of the Employer's remaining eight facilities, three are nonunion, four have bargaining units represented by the United Food and Commercial Workers International Union, and one has a bargaining unit represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union (USW), AFL-CIO.

“Bargaining Unit member” appears in this Agreement, it shall apply to the Bargaining Unit members of the Bargaining Unit employed by the Company covered by this Agreement.

Article 2 goes on to state in paragraph 2.2 that “[t]his Agreement *shall also apply* to all other wholly owned Plastech Engineered Products, Inc. units when the Union demonstrates that it has majority support from employees at those locations.” (emphasis added).

References to ‘bargaining unit’ or ‘bargaining units’ appear elsewhere in the agreement. Article 8 provides, in part, that “every reasonable attempt possible will be made to in-source work currently sub-contracted/outsourced outside the bargaining units.” Under Article 13, dealing with seniority, separate paragraphs outline provisions dealing with “Employees Transferred Outside Bargaining Unit” and “Work Performed by Employee(s) Outside Bargaining Unit.” In the General Provisions listed in Article 20, under “Temporary Employees” it states that, with the consent of the Union, the Employer may utilize temporary employees for up to 30 days “to meet staffing requirements for work normally performed by the Bargaining Unit.” Nowhere in the aforementioned articles does it elucidate as to which bargaining unit or units it is referring.

The agreement does afford some bargaining on a local level. It provides in Article 9 for the formation of three-member local bargaining committees. They are to meet with local plant management at least twice per month to discuss “items that are of mutual interest to the parties.” These local parties are also charged to meet, when necessary, to discuss layoffs, which are effected on a plant-wide basis. Pursuant to Article 16, local bargaining committees, with a regional or national union representative, are also to meet with the Employer’s corporate labor representative and a local human resource representative to bargain over issues of “Overtime Equalization, Bulletin Boards, Breaks and Lunch Periods, Wages/Classifications, Shift Premiums and Local Facility Work rules, including attendance policies.” However, if the parties are unable to reach agreement within five months, the matter is to be addressed by a joint Union/Employer Committee, on which the local bargaining committee is not contractually entitled to representation, and the matter may thereafter be submitted to interest arbitration. Article 20 of the national agreement provides that “[n]o provision of any local agreements between local plant management and officers and/or shop committees therein shall supersede or conflict with any provision of this agreement.”

Further, Article 11 provides a common grievance/arbitration procedure, whereby Step 1 and 2 discussions will be held on a local level, a regional union representative is included at Step 3, and, if necessary, arbitration is held at a national level. The national agreement also provides substantive terms common to collective bargaining agreements, including health care benefits, life insurance, a 401(k) plan, vacation pay and holiday pay eligibility, and provisions for leaves of absence.

Analysis

It is well established that a decertification petition must be coextensive with the recognized or certified bargaining unit. *Mo's West*, 283 NLRB 130, 130 (1987); *Delta Mills*, 287 NLRB 367, 368 (1987); *Campbell Soup Co.*, 111 NLRB 234, 235 (1955). However, if the parties mutually agreed to merge individually-certified units into a single unit covering multiple facilities, the appropriate unit for a decertification or certification election is the multi-facility grouping. *Gibbs & Cox*, 280 NLRB 953, 954 (1986). This principle applies even when there is reason to believe that the carved-out unit which the petition seeks to decertify may have been found to be an appropriate separate unit at an initial certification proceeding. See *W.T. Grant Co.*, 179 NLRB 670 (1969) (Board held that although there were factors that would establish the propriety of a separate unit for service employees if presented at an initial certification proceeding, the evidence established that the employees were merged into one overall unit and a petition seeking to decertify only a segment of the existing unit should be dismissed). The Board looks to contractual language, bargaining history, and course of conduct for evidence of the parties' intent for merger. *White-Westinghouse Corp.*, 229 NLRB 667, 672 (1977); *General Electric Co.*, 180 NLRB 1094, 1095 (1970). In the absence of "unmistakable evidence" that the parties acquiesced in the extinction of the separate units and the creation of a multi-location unit, the Board will find that the individually certified bargaining units are appropriate. *Duval Corp.*, 234 NLRB 160, 161 (1978), quoting *Utility Workers Local 111 (Ohio Power Co.)*, 203 NLRB 230, 239 (1973), *enfd.* 490 F.2d 1383 (6th Cir. 1974).

In the instant case, there is no dispute that the Union was recognized by Plastech as the bargaining representative of a single plant Talon Court unit. However, unmistakable evidence of merger can be found in the contractual language of the national agreement, which became immediately applicable to the Talon Court unit upon recognition. In cases where the language of the recognition clause clearly describes a merged unit, the Board has generally found that a merger has taken place. *The Green-Wood Cemetery*, 280 NLRB 1359 (1986); *Armstrong Rubber Company*, 208 NLRB 513 (1974); *W.T. Grant Co.*, 179 NLRB 670, (1969).

The first paragraph of Article 2 establishes a multi-plant bargaining unit consisting of all full-time and regular part-time production and maintenance employees at all locations represented by the Union as of the date that the national agreement became effective, September 15, 2005. More significantly, paragraph 2.2, within the same article covering recognition, brings all future Union-represented facilities under the same national agreement. While individual facilities would, by necessity, have to be recognized in the future on a single unit basis, this evidences a clear understanding that the individual units would then immediately be brought under the same collective bargaining agreement and into the larger multi-plant unit. While Article 8 does refer to "bargaining units," that language does not appear in the recognition clause and does not negate the intent shown in Article 2 to create a single multi-plant unit.

The conclusion of a merger is reinforced by examining substantive terms of the agreement, such as health care benefits, life insurance, and a 401(k) plan, which provide common terms of employment nationwide. While some issues, including wages, are left open for negotiation of local supplements to the national agreement, this is understandable considering the varying local conditions faced at different facilities, such as differing local economies and different products being produced. Still, all local negotiations are led by Labor Relations Manager Lance Connoy for the Employer and attended by a regional or national representative of the Union. Furthermore, no provisions reached during local negotiations may conflict with terms of the national agreement. Under these conditions, the existence of local bargaining does not disturb the greater unified structure of bargaining. See *Goodyear Tire and Rubber Co.*, 105 NLRB 674 (1953) (finding merged units where evidence of company-wide agreements containing substantive terms usual to a collective bargaining agreement, a prohibition against conflicting local supplements, participation of locals in the negotiation and execution of agreements, requirement of approval of companywide master agreement by a majority of employees, and the local's relegation to the employer and union of the right to effectuate changes companywide, outweighed the factors of the recognition clause's reference to "units," the local processing of grievances, plant seniority, and negotiation of local supplement agreements on limited issues).

The Petitioner challenges the existence of a multi-plant bargaining unit based on the limited amount of bargaining that has occurred. While it is true that only one local bargaining session concerning Talon Court occurred, the record does not provide any evidence as to what interactions have occurred between the Union and Employer on a national level. Further, the Union has bargained with the Employer and its predecessor on a single multi-plant unit basis since at least 2005. The Board has permitted a decertification election in a single facility unit where it had been merged into a larger unit for only a short period of time. *West Lawrence Care Center*, 305 NLRB 212 (1991). However, such a finding would be warranted only where (1) the history of multi-facility bargaining could be counted in months not years, and (2) where there was some history of single facility bargaining involving the facility in question. Neither is true in the instant case.

The Petitioner also argues that the policy underlying the Act supports allowing a decertification election so that employees may exercise their free choice to decide whether they want the Union to represent them. The Board has addressed those rights guaranteed by the Act and found that employees' freedom of choice does not support disrupting a long established bargaining unit. In *Arrow Uniform Rental*, 300 NLRB 246, 248 (1990), the Board stated:

The Board seeks to balance employees' rights guaranteed by Section 7 of the Act with the goal of fostering stability in established bargaining relationships. Generally, if there is evidence that the parties have included two or more plants in a single collective-bargaining agreement, the bargaining history becomes controlling, and the only appropriate unit becomes the

one consisting of all the employees covered under the agreement. The existence of a multilocation bargaining history precludes severing the employees of any given location from the overall multiplant unit, and the Board has determined that even a 1-year bargaining history on a multiplant basis can be sufficient to bar a single-unit election.

The Petitioner makes further arguments as to the lawfulness of the neutrality agreement between the parties under which the Union achieved recognition as the collective bargaining representative of the Talon Court employees. I decline to entertain these arguments. The issue is well outside the statutory 10(b) period. Moreover, I will not address the lawfulness of the manner upon which recognition was granted in this case based on a record dealing with a representation matter and an issue which the parties had little reason to explore fully on the record and did not do so. The fact that the Employer recognized the Union as the bargaining representative of the employees at the Talon Court facility was not and is not in dispute. The sole issue decided here is whether that single facility unit was immediately thereafter merged into the overall multi-plant unit, thereby making the multi-plant unit the only appropriate unit in which an election can be held.⁵

Conclusion

Based on the foregoing and the record as a whole, I conclude that the Talon Court unit has merged into the multi-plant bargaining unit covered by the parties' national agreement. As a result, an election only for the Talon Court portion of the overall unit is not appropriate and I shall dismiss the petition.

ORDER

IT IS ORDERED that the petition is dismissed.

Dated at Detroit, Michigan, this 3rd day of February 2009.

(SEAL)

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

⁵ The Petitioner requests that I take administrative notice of a June 27, 2005 Advice memorandum concerning Plastech Engineered Products, Inc., Cases 10-CA-35554 and 10-RD-1440, and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, Case 10-CB-8257. This memorandum concerns the lawfulness of a prior recognition agreement entered into between the parties on December 17, 2003. That prior agreement is no longer operative and has no relevance to the current matter. For that reason and the reasons discussed above, I decline to take administrative notice of this Advice memorandum.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.69 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**. This request must be received by the Board in Washington by **February 17, 2009**. The request may be filed electronically through **E-Gov** on the Board's website, **www.nlr.gov**,⁶ but may **not** be filed by facsimile.

⁶ Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.

To file the request for review electronically, go to **www.nlr.gov** and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, **www.nlr.gov**.