UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

SCI ILLINOIS SERVICES, INCORPORATED
Employer

and **Case: 13-UC-424**

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1
Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held before a hearing officer on April 8, 2010, of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to clarify two multi-facility bargaining units represented by the Petitioner at the Employer's Illinois cemetery operations and three of the Employer's unrepresented cemetery facilities into one larger unit to be represented by the Petitioner.[1]

I. Issues

The Petitioner seeks the following unit:

> Non-supervisory cemetery workers, grounds workers, greenhouse workers, chapel attendants, mausoleum attendants, crematory engineers, specialists (including those performing grave digging and vault placement and sealing duties), seasonal and fill-in employees, and working foremen performing work at the 20 SCI Illinois Services Incorporated Cemeteries. . . .

The three employee groups at issue in this proceeding work at 20 cemeteries. Seven of those cemeteries are referred to as the "Legacy" unit. Ten others are referred to as the

[1] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial 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 positions of the parties as stated during the hearing and in their briefs have been carefully considered.

"Alderwoods" or "non-Legacy" unit. Finally, the third employee group consists of three unrepresented cemetery locations. The Petitioner contends that all three groups, which includes 20 cemeteries, share a community of interest with one another and accordingly should be clarified into one unit. Alternatively, the Petitioner takes the position that it would be appropriate to combine only the Alderwoods and Legacy units (17 cemeteries) that it already represents.

The Employer, on the other hand, contends that the two units that the Petitioner already represents are appropriate separate units, subject to collective-bargaining agreements and have a long historical bargaining history that clarification would disrupt. The Employer also argues that the third group of unrepresented cemeteries raises a question concerning representation and is not appropriate for unit clarification.

II. Decision

Because the already represented units in question have long bargaining histories and identities distinct from one another, and the record shows no recent substantial changes or other compelling circumstances which warrant disregarding the long bargaining history of separate units, I find it is inappropriate to combine the two existing bargaining units into one unit through a unit clarification petition. Additionally, because the third unrepresented group of employees has historically existed along side of the two represented bargaining units without inclusion in the represented bargaining units, I find that inclusion of this group of employees in a unit with the represented employees raises a question of representation and is, therefore, inappropriate for a unit clarification proceeding.[2]

Accordingly, I find that unit clarification sought by the Petitioner is inappropriate, and IT IS HERBY ORDERED that the Petition at issue be dismissed.

III. Statement of Facts

A. The Employer's Operations

The Employer operates a number of cemeteries in the Chicago area employing approximately 78 cemetery workers at the petitioned for locations. The 20 cemeteries at issue are located throughout Chicago with the northern-most cemetery approximately 80 to 90 miles north of the southern-most location. Otherwise, the cemeteries cover an area around 45 miles

[2] The record was developed primarily on whether the petitioned-for unit employees shared a community of interest. While an amount of incidental evidence developed during the hearing shed some light on the single employer issue, it is clear that the record was not as fully development by both parties as it could have been. Accordingly, as I find the record evidence on community of interest sufficient to resolve the unit scope issue, I, like the Board in *Germantown Development,* 207 NLRB 586 (1973), find it unnecessary to resolve the single employer issue. Additionally, even assuming *arguendo* that SCI Services Incorporated and Alderwoods Group, Inc. are a single employer, my decision still applies regarding the inappropriateness of combining two historical units in the absence of a showing that the historical units are no longer appropriate.

north, west, and south from the Chicago Loop. The Legacy group of cemeteries has a bargaining history dating back 18 years. These seven Legacy cemeteries consist of: Memory Gardens; Rosehill; Memorial Park Greenhouse; Mount Emblem; Evergreen; Chapel Hill Gardens South; and Chapel Hill Gardens West.

In November 2006, the Employer acquired the "Alderwoods" or "non-Legacy" group. The 10 Alderwoods cemeteries consisted of: Oak Woods; Irving Park; Mount Olive; Elmwood; Beverly; Oak Hill; Lincoln; Ridgewood; Mount Auburn; and Woodlawn. Like the Legacy group, the Alderwoods group is also represented by the Petitioner. When the Employer acquired the Alderwoods businesses, it also acquired the three unrepresented cemeteries that the Petitioner seeks to clarify into one overall unit. The three unrepresented locations are: Chapel Lawn; Oakland Memory Lanes, and Northshore. According to the Employer, all of the cemeteries it operates have their own unique heritage and history, which includes ethnic, neighborhood, or religious connections and legacies.

For these Chicago area cemeteries, the Employer's managing director is Lawrence W. Michael. David E. Klein, the Employer's market director, answers to Michael. Klein has two administrative assistants: Debbie O'Connell and Terry Moscoto. Klein oversees the general operations of the cemeteries and the funeral home businesses. Each cemetery has a general manager and at least one superintendent. Some general managers oversee more than one location. The general managers of the cemetery locations report directly to David Klein. The superintendents act as ground level supervisors.

B. Bargaining History

The Employer's last collective bargaining agreement with the Petitioner for the Legacy locations was executed November 9, 2007 and was effective from December 1, 2006 to December 31, 2009. A new agreement is currently being negotiated by the parties. The unit as defined by the expired contract is:

> All Regular Classified grounds workers, greenhouse workers, chapel attendants, mausoleum attendants and [sic] employed by SCI Cemeteries excluding Seasonal and Fill-in employees and supervisory employees.[3]

When the Employer acquired the Alderwoods locations, it adopted the collective bargaining agreement Alderwoods had with the Petitioner. The Alderwoods locations have had a relationship with the Petitioner dating back to at least 1979.[4] The Employer and the Union subsequently negotiated a new agreement with terms beginning on January 1, 2008, and expiring on December 31, 2010. The Alderwoods collective bargaining agreement's unit is defined as:

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[3] A separate agreement, which also expired on December 31, 2009, covers the seasonal and fill-in grounds workers, greenhouse workers, chapel attendants, and mausoleum attendants employed by SCI Cemeteries and excludes full-time regular classified employees and supervisory employees. The parties are also negotiating a new agreement for these employees.

[4] Michael Fugman testified that he was hired in 1979 and at that time the union was SEIU, Local 106.

All full-time Regular Employees, Working Foremen, Seasonal Employees, and Fill-In Employees employed by the Cemeteries, excluding sales personnel, office clericals and supervisors as defined in the National Labor Relations Act.

As mentioned before, the three remaining locations have no bargaining history with the Petitioner.

C. Working Conditions

1. Commonalities within the Legacy and Alderwoods Groups

Grounds workers duties include doing the burial setups, burials, opening and closing the grounds, digging holes, opening graves, and lowering coffins into vaults. Burial setups involve setting up chairs and rugs for mourners and preparing the lowering device used to lower the casket into the ground after the hole has been properly dug and secured. Some grounds workers also have maintenance skills. When performing maintenance duties, in addition to their normal grounds duties, these workers repair and maintain the vehicles used at the cemetery, including tractors, dump trucks, and the Easy Go, a golf cart like vehicle. Each cemetery has one to two backhoes, one to two dump trucks, and the Easy Go carts to carry tools and accessories. These pieces of equipment are housed in a maintenance building at each individual cemetery. Only those with a specialist classification are allowed to operate the backhoe around the workers as it takes additional skills. The backhoe is used primarily to dig holes for graves.

The grounds maintenance employees are supervised by the superintendents who oversee that particular cemetery. Superintendents oversee the day-to-day operations of the burials and the assignments of the burials to make sure all the interments are done properly. During the hearing, the parties stipulated that the superintendents were Section 2(11) supervisors within the meaning of the Act. David Klein, the Employer's market director, deals with the grievances filed in the Petitioner's units. Klein makes the final decision in cases involving egregious offenses that may lead to discharge although he gives heavy weight to the recommendation of the general manager and superintendent for the cemetery involved. On occasion, which will be discussed in more detail below, workers from the Legacy group work at an Alderwoods group cemetery and vice versa. When this happens, the employees are supervised by the superintendent of the cemetery they are working at.

All the grounds maintenance employees wear uniforms. These uniforms vary from cemetery to cemetery in that they are different colors and may have different patches, some naming the cemetery, but most have a "Dignity" logo, which is the Employer's national brand.

Grounds maintenance employees generally have at least a high school level of education. Some have technician or mechanical skills that allow them to perform more maintenance work than others. When the Employer hires it simply looks for entry level ground crews.

Grounds maintenance employees from all three groups have also attended some training together. The Employer gave the grounds employees from all the cemeteries training in interment procedures along with an interment verification participant guide. The training, which lasted around four hours, was held for the employees at the Ridgewood location with both SCI

and Alderwoods employees in attendance. The interment training was given in or around summer of 2009. The grounds employees have also received ethics training at the Chapel Hill West location in approximately February 2010 because of pending and settled lawsuits. Employees also took online safety training courses.

On occasion, grounds employees are transferred between cemeteries, including cemeteries outside of the employee's historical group, for short periods of time. When an employee from another group comes to help out, that employee is paid the wages rates set forth by the collective bargaining agreement that covers his/her unit and not the wage rate of the cemetery that employee is working at. For example, grounds maintenance employee Michael Fugman, who works at the Alderwoods' Elmwood cemetery, testified that several weeks ago, they had seven funerals on a Monday. He testified that three individuals from other cemeteries came to work with them. According to Fugman, two of these individuals were from Irving Park and one was from Chapel Hill West. Fugman testified that he works with Legacy side employees several times a year when there is a large number of funerals going on and these employees performed the same work as the regular Elmwood workers except for operating the backhoe. Fugman has seen these temporary assigned employees operate dump trucks, a bobcat loader, a small tractor, the club cars, and a cement mixer, all of which are used by Alderwoods side employees. Although Mr. Fugman testified that he has witnessed this happen six times a year on average, he could not recall any dates or any names of the people he witnessed.

Similarly, Legacy grounds employee John Bukowski testified regarding working with Alderwoods employees. Bukowski works at the Mount Emblem location. Bukowski testified that in the summer of 2009, his cemetery had been doing some internments from O'Hare Airport. They were shorthanded so an employee from the Elmwood cemetery was brought over to help out. Bukowski testified because of a high number of burials in February 2010, an Alderwoods employee came to work with them. Bukowski testified that the transferred employees did the same things they did. Bukowski also testified that he himself had worked at Alderwoods' Mount Olive cemetery three times at the end of 2009.

It should be noted that although employee interchange occurred on a somewhat limited basis, both collective bargaining agreements for the Legacy and Alderwoods units contain a temporary assignment clause. The clause from the SCI Illinois Services contract states that if any temporary assignment lasts longer than 30days, the Employer must obtain the agreement of the Petitioner. The Alderwoods contract clause contains no such limitation.

At the hearing, very limited testimony was presented regarding the three unrepresented cemetery locations. David Klein testified that from a grounds perspective, the employees there did not do anything different than the rest of the employees. However, no further details were given about their working conditions.

2. Differences Between the Legacy and Alderwoods Groups

The collective bargaining agreements contain significant differences that affect the units' working conditions. For instance, the job classifications and the wage scale for the Legacy group differ considerably from the Alderwoods group. In the Legacy group, regular employees

are classified as specialists, class A, class B, or greenhouse workers.[5] The specialist wage rates begin on December 1, 2006, at a minimum of $17.22 per hour, and increase $.15 per hour each year through December 1, 2008. Class A workers start with at a minimum $14.70 per hour and increase $.15 per hour as well through December 1, 2008. Class B and mausoleum attendants start at a minimum of $14.10 per hour and increase $.15 per hour through December 1, 2008. Additionally, as of the effective date of the collective bargaining agreement, regular employees receive $.70 per hour increases. Newly hired employees receive a minimum of $11 per hour and are working toward a Class B classification, receiving an increase of $.50 per hour every six months until they reach the Class B classification. Newly hired regular employees are also subject to a 12 month probationary period during which the Employer may suspend or discharge them without being subject to the grievance procedure.

The Alderwoods collective bargaining agreement classifications are regular employees, working foremen, crematory engineers, specialists, class "A", seasonal and fill-in employees. Regular employees hired after the effective date of the agreement are paid no less than $9 per hour. The agreement has a wage cap of $18 per hour. Regular full-time employees receive: 1) a 1% increase effective January 1, 2008; 2) a 2% increase effective January 1, 2009; and 3) a 3% increase effective January 1, 2010. New employees serve a six month probationary period during which they can be terminated without recourse to the grievance procedure.

If the Employer has to lay off an employee for lack of work, the contracts differ on the terms as well. The Legacy contract provides that employees with one to three years of service receive one week of notice or pay. Three to six years of service grants an employee two weeks of straight time. Finally, six or more years of service will grant an employee three weeks of straight time. Unit employees under the Alderwoods agreement receive one week of straight time severance for every year of service they have up to six weeks. There are differences between the Legacy group and the Alderwoods group regarding health insurance benefits and employee contributions, life insurance coverage, vacation time, funeral leave, and sick leave time.

IV. Analysis

The guiding principles for unit clarification were set out by the Board in *Union Electric Company*, 217 NLRB 666, 667 (1975):

> Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category—excluded or included—that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or

[5] Greenhouse workers are paid as either specialists or class B workers depending upon their designation by the Employer.

> an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice become established by acquiescence and not express consent.

Pursuant to the criteria set forth in *Union Electric*, the Board will not clarify a bargaining unit to include employees that have historically been excluded from the unit absent recent substantial changes that negate their separate identity. *Kaiser Foundation Hospitals*, 337 NLRB 1061 (2002); *United Parcel Service,* 303 NLRB 326, 327 (1991). The Employer acquired the three unrepresented cemeteries in 2006 when it acquired the Alderwoods group. Those three cemeteries were unrepresented then and continued to be unrepresented despite the fact that the Petitioner and the Employer entered into a new collective bargaining agreement for the Alderwoods group effective January 1, 2008. There is no showing that the three unrepresented cemeteries have undergone any changes, substantial or not, since 2008. According, I find that it is inappropriate to clarify the existing bargaining units to include the three unrepresented cemeteries.

The Petitioner has, alternatively, taken the position that it would be appropriate to consolidate the two separate units it has historically represented. The criteria to clarify bargaining units as set forth in *Union Electric* is applicable to the issue of whether it is appropriate to clarify the scope of the Legacy unit and the Alderwoods unit into a single unit. *Lennox Industries,* 308 NLRB 1237, 1238 (1992); *Rock-Tenn*, 274 NLRB 772 (1985). The key issue is whether there are recent substantial changes that call into question whether the historical bargaining unit has been rendered inappropriate. It is the burden of the party seeking to clarify the scope of a historical bargaining unit to show that recent changes have rendered historical unit inappropriate. *Indianapolis Mack Sales & Service,* 288 NLRB 1123, 1126 (1988). In *Rock-Tenn*, the Board clarified a historical two-plant unit into separate units following recent significant changes resulting from the two plants having been sold to separately incorporated divisions of the original employer. The Board found that the sale had resulted in significant organizational changes. Each plant was engaged in totally different operations with different manufacturing processes, each plant had its own separate and distinct corporate management and supervisory staff, the previously centralized labor relations control had been completely decentralized, and grievances were handled separately for each plant. Accordingly, the Board clarified the unit as requested by the petitioner. However, in the absence of any recent substantial changes, the Board in *Batesville Casket Co.*, 283 NLRB 795 (1987) declined to clarify a historical two-plant unit into two separate units.

In this case, the Petitioner has not shown recent, substantial changes that renders the two historical units inappropriate. In support of its position that the two historical units are no longer appropriate and should be clarified into one unit, the Petitioner relies on the following:

1. Employees in both units perform the same work, and share common skills and training.
2. They are located in one relatively small geographic area.
3. There is an exchange of manpower and materials between the two units.
4. There is common labor relations control over both units.

While these factors may demonstrate that a combined unit may be appropriate, they do not, on the record in the instant case, show that the historical units have been rendered inappropriate such that the bargaining units should be clarified by consolidating them.

The criteria in numbers one and two, above, do not present any substantial recent changes. The employees in both units have performed the same work tasks and exercised common skills throughout the extensive bargaining history of both units. There has been no change to geographic area of the two historical units. The only factor that has changed is that the employees in the two historical units have recently had two instances of common training. The Employer has given interment and ethics training to both groups and employees have also taken online safety courses. I do not find this limited common training to be a substantial change.

The criteria in numbers three and four represent changes that resulted from the Employer's acquisition of the Alderwoods unit in November 2006. The Petitioner presented some evidence of employee interchange by temporary transfers between the two units. The Employer agrees that there is temporary interchange between the two units, pointing out that after the Alderwoods acquisition it negotiated provisions in collective bargaining agreements for each unit that permitted it to make such temporary transfers across unit lines. Given this history, I can not find that employee interchange due to temporary transfers across unit lines is a recent change that renders the existing units inappropriate. The Petitioner acquiesced in permitting such transfers in separate agreements that continued the existence of separate units.

The Employer's acquisition of Alderwoods group did change the upper management structure by providing a degree of common labor relations control over both units. Lawrence W. Michael acts as the Employer's managing director over both units and David Klein is the market director over both units. While Klein handles grievances, his involvement in discipline is limited to that which can lead to the discharge of employees. Employees still deal with the same ground level supervision that they have always had. The same ground level supervisors still investigate work problems and issue discipline to employees. The corporate structure of the separate cemeteries remains the same as it historically has been. The corporations that owned or operated a cemetery or a sub-group of cemeteries, which in turn were owned by Alderwoods group, continue to own and operate those cemeteries. The change brought about by the Employer's acquisition of the Alderwoods group was a chance of ownership at the parent corporate level.

While the Petitioner contends that the degree of integration between the Legacy cemeteries and the Alderwoods cemeteries has recently come to light by the recent common training sessions for employees and the temporary transfers of employees and materials across unit lines, I find these factors to be insignificant to the extent they can be considered recent. The Petitioner has entered into separate bargaining agreements subsequent to the Employer's acquisition of the Alderwoods group which maintain separate units, and there is little record evidence of changes that occurred after the Petitioner entered into collective bargaining agreements that continued the separate units. Absent such changes, it is not appropriate for the Board to change what the Petitioner and the Employer have agreed to. *Batesville Casket*, supra.

V. 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 NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by June 1, 2010**.**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 17th day of May, 2010.

/s/ Joseph A. Barker
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CATS –UC petition –other issues
385-7533-4000; 385-7533-8000