

Executive Resources Associates, Inc. and Miscellaneous Warehousemen, Drivers and Helpers Local 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner. Case 31-RC-6335

January 29, 1991

DECISION ON REVIEW AND ORDER
REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On August 12, 1988,¹ the Acting Regional Director for Region 31 issued a Decision and Direction of Election in which he found the petitioned-for unit to be an appropriate unit² and directed an election.³

On August 26, the Employer filed a timely request for review, on the grounds that the decision departed from precedent. The Employer contended that the only appropriate unit consisted of certain employees covered by both of the Employer's contracts in effect at the Naval Weapons Center at China Lake, California.

By telegraphic order dated September 8, the Board granted the request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in light of the request for review and supporting brief, and has decided to affirm the Acting Regional Director's rulings, findings, and conclusions, as modified below.

Facts

The Employer, with headquarters in Arlington, Virginia, provides technical support services throughout the country to various government and commercial entities. Two separate contracts covering such services are in effect at the Naval Weapons Center at China Lake in California: the "Echo Range" contract and the "Range Support Services" contract.

The Petitioner seeks to represent a unit consisting of approximately 48 employees covered by the Employer's Echo Range contract. The Employer contends that the only appropriate unit must include its employees working under both its Echo Range and Range Support Services contracts.

¹ All dates are 1988 unless otherwise specified.

² The Acting Regional Director described the appropriate unit as follows:

All employees employed by the Employer under the Echo Range contract including, but not limited to, Instrumentation Technicians A, Instrumentation Technicians B, Instrumentation Technicians C, Electronic Technicians A, Electronic Technicians B, Electronic Technicians C, Digital Engineers and Radar Engineers but excluding office clerical employees, professional employees, administrative assistant, program manager, program coordinator, guards and supervisors as defined in the Act.

No issue concerning unit composition is before the Board now.

³ The election was held September 8, 1988, in the unit found appropriate by the Acting Regional Director. The ballots were impounded.

The Range Support Services contract has been in existence since September 1986, the Echo Range contract since March 1988. Both contracts are for 5 years. Employees under both contracts maintain and operate equipment in support of flight operations at China Lake. Equipment differs and is not interchanged because the Range Support Services employees handle the conventional weapons delivery range and the Echo Range employees cover primarily an electronics warfare range.⁴

The employees covered by the two contracts have similar educational backgrounds, i.e., high school diplomas and military or trade school training in electronics or electromechanical work. The same personnel policies and same benefits apply to employees covered by both contracts.⁵ Payrolls for these and all its other contracts are handled at the Virginia headquarters. The salary range at Echo Range is \$20,000-\$38,000 and at Range Support Services is \$11,000-\$29,000. Echo Range employees work 10-hour days, 4 days a week; Range Support Services employees work 8-hour days, 5 days a week.

There are separate program managers for Echo Range and Range Support Services. They exercise immediate supervision over their respective ranges and report to the same executive director. That executive director's office is in Virginia; he is also responsible for eight other contracts at five other locations in the country.⁶ The program manager for the Echo Range contract works from a trailer on the Echo Range. The program manager for the Range Support Services contract works from the main base of the Naval Weapons Center, which is approximately 35 miles from the control point for Echo Range.

The respective program managers interview employee applicants and submit recommendations to the executive director.⁷ If the forms are in order and the applicants meet the requisite qualifications, the executive director authorizes the respective program manager to release an "offer." The program managers recommend pay raises, bonuses, and discipline, and they complete performance reviews for their respective employees. The record shows that the executive director exercises approval authority on these matters. However, the record offers no indication of how often the executive director refuses to go along with the recommendations of the respective program managers or how the executive director might go about exercising any independent review. At most, the record shows that the executive director talks with the respective

⁴ A "range" is a large geographical area with controlled airspace.

⁵ This uniformity in personnel policies and benefits applies nationwide to all of the Employer's employees.

⁶ The Employer has four operating centers, each of which has an executive director.

⁷ Initial interviews at Echo Range were conducted by the Range Support Service's program manager because the program manager for Echo Range had not yet been hired.

program managers daily and that either he or a vice president visits the respective sites once a month.

Employees covered by one of the two contracts involved here would not be directly affected by the cancellation or reduction in the other contract; there are no “bumping” rights from one contract to the other. There have been two transfers from Range Support Services to “non-unit” Echo Range jobs and one recent temporary transfer. Otherwise, the record reveals no other interchange or interaction by the employees covered by the respective contracts.⁸ Indeed, while employees may perform work on the same naval test mission at China Lake, the Range Support Services program manager testified that “our people would not work, would not coordinate with the Echo people. But the government would do the coordination and assign us our positions.”

Discussion

In finding that certain employees covered by the Echo Range contract constitute an appropriate unit, the Acting Regional Director concluded that the evidence was not sufficient to rebut the single “plant” presumption favoring the petitioned-for Echo Range contract unit. He relied on the lack of significant interchange or interaction among the employees in the two contract groups, noting that they work on different equipment under two separate service contracts with different expiration dates. He also relied on an absence of any bargaining history concerning the employees and the fact that no labor organization seeks to represent the employees on a broader basis. In addition, he relied on evidence that employees in the requested unit perform their day-to-day work under the immediate supervision of their contract’s program manager, who rates their performance and affects their job status and pay through his recommendations, and that the record fails to disclose the extent to which the executive director follows the program manager’s recommendations concerning such matters.

In its brief in support of the request for review, the Employer challenges the Acting Regional Director’s application of the single plant presumption to the government services contract here. Instead the Employer contends that the Acting Regional Director should have applied a community-of-interest analysis.

It has been a longstanding rule that the Act does not require that the bargaining unit approved by the Board be the only appropriate unit, or even the most appropriate unit; it is only required that the unit be an appropriate unit.⁹ Even putting aside the presumption re-

lied on by the Acting Regional Director, we are satisfied that the petitioned-for unit of employees covered by the Echo Range contract is an appropriate unit.

We note that certain considerations relied on by the Acting Regional Director in making the unit determination are relevant under either the presumption he applied or the community-of-interest analysis urged by the Employer. For example, the lack of significant employee interchange between the two groups of contract employees is a strong indicator that the Echo Range employees enjoy a separate community of interest.¹⁰ Similarly, despite being commonly located at the China Lake complex, the record fails to show that the two groups of employees work in close geographic proximity or that they come in frequent contact with each other. The Range Support Services contract employees work primarily from the main base of the Naval Weapons Center, which is 35 miles from the Echo Range control point; and although some of them may at times work on the Echo Range, they do not work with the Echo Range contract employees. Likewise, while on occasion certain Echo Range employees may go to the main base or the lab, and some work at sites located up to 20 miles from the Echo Range control site, there is no evidence of interaction between the Echo Range and Range Support Services employees while at work. To the contrary, the testimony of the Range Support Services program manager establishes that “our people” do not coordinate with the Echo Range employees.

The finding of a separate community of interest for the Echo Range employees is also supported by the fact that the service contract under which they work expires approximately 1-1/2 years after the Range Support Services contract terminates. This significant time difference gives rise to potentially divisive representational and bargaining concerns that not only demonstrate a separate community of interest for the Echo Range employees but might even suggest that those employees could not share a collective community of interest with their Range Support Services counterparts. To begin with, the earlier termination of the Range Support Services contract would bring about a sizable reduction in a unit consisting of the two groups of China Lake employees early on in the bargaining relationship with the Employer. More importantly, both before and at the outset of the establishment of any such relationship, the wide difference in the contracts’ expirations could put the Echo Range employees at cross-purposes with the Range Support Services employees concerning the bargaining demands the two groups of employees would want to make on the Em-

⁸The record indicates that Echo Range employees *may* go to the main base to pick up equipment or to go to the lab and that Range Support Services employees *could* perform work in the Echo Range area.

⁹*Friendly Ice Cream Corp. v. NLRB*, 705 F.2d 570 (1st Cir. 1983); *NLRB v. J. C. Penney Co.*, 620 F.2d 718, 719 (9th Cir. 1980); *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951).

¹⁰As the court stated in *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981): “The frequency of employee interchange is a critical factor in determining whether employees who work in different [groups] share a ‘community of interest’ sufficient to justify their inclusion in a single bargaining unit.”

ployer or which ones should be given priority or insisted on at the expense of others. For example, conflict between the two employee groups could develop over the duration of the collective-bargaining agreement and the desirability of having overall unit seniority and "bumping" rights; and severance pay could be more important as a term and condition of employment to the Range Support Services employees facing earlier contract and job termination than other fringe benefits that might be of more immediate concern to the Echo Range employees. In addition, although not highlighted by the Acting Regional Director in his decision, there are substantial differences in wages between the two employee groups that would likely add to this potential for disagreement in bargaining aims. In particular, the \$9000 differential in bottom and top salary levels favoring the Echo Range employees could become a prime source of friction, with the Range Support Services employees wanting pay parity and the Echo Range employees wanting pay increases for themselves.

Finally, an important factor demonstrating that the employees covered by the Echo Range contract enjoy a separate community of interest is that they perform their day-to-day work under the immediate supervision of the contract's program manager. It is he who rates their performance and it is he who makes recommendations affecting their pay and job status and tenure. In this regard, the executive director overseeing the China Lake contracts testified that a separate project manager for the Echo Range is required to provide onsite technical guidance and supervision because of the large number of employees covered by the Echo Range contract. Although the executive director has to approve all hiring and personnel actions recommended by this and all other program managers reporting to him and in general has final authority over labor relations matters concerning the contract groups for which he is responsible, the record is silent on the extent to which he does or does not rely on the program managers' recommendations or how often and under what circumstances he rejects them. Although the executive director has corporate documents that were filled out by the program managers to aid his review of their recommendations, and in some instances consults with them concerning the recommendations, the record does not indicate whether approval of those recommendations is routinely given by him if the documents are in order or, if not, what steps or methods are then taken by him to conduct an independent investigation to determine the merits of the recommended actions. Nor does the fact that the executive director talks daily with the respective program managers under his control, including the program managers for each of the China Lake contracts, overcome this evidentiary void. Because the executive director works out of the Arlington, Virginia office, and because he has to oversee

10 contracts at 7 different locations, it would appear that of necessity he must rely substantially on the recommendations of the program managers reporting to him.¹¹ Consequently, we find it reasonable to infer that the program managers have significant input into matters involving the employment status of the employees under their immediate supervision.¹²

In light of the foregoing factors demonstrating a separate community of interest among the Echo Range employees, and the absence of any bargaining history at the Employer's China Lake operations or a labor organization seeking a broader unit there, the Employer's centralized administrative control and uniform employee benefits and personnel policies are insufficient to establish that a merger of employment interests of the Echo Range employees with the Range Support Services employees has occurred so as to require finding that the former employees have lost their separate community of interest. Although centralized administration and common benefits and personnel policies may well support a finding that a broader unit, if sought, also would be an appropriate unit, it is up to the Employer to establish that the petitioned-for narrower unit is inappropriate. *NLRB v. Living & Learning Centers*, supra at 213; *Omni International Hotel*, 283 NLRB 475, 476 (1987). This the Employer has not done for the reasons explained above.

We find no merit in the Employer's reliance on *New England Telephone Co.*, 280 NLRB 162 (1986), to support its contention that a systemwide or multifacility unit is the appropriate unit in service-oriented industries. The Board's holding in that case that a systemwide unit is optimal in the public utility industry rested largely on the high degree of interdependence of the various segments of a public utility. No such interdependence has been shown here.¹³ Indeed, the evi-

¹¹ See *Eschenbach-Boysa Co.*, 268 NLRB 550, 551 (1984). That he or the executive vice president may once a month visit each contract site does not invalidate this conclusion.

¹² To the extent questions exist concerning the effectiveness of the program managers' recommendations, we resolve any ambiguity in the record against the Employer, who had the burden of producing evidence that would enable us to determine this issue. Moreover, there is no absolute rule that a single plant unit cannot be appropriate unless the manager of that unit has the authority to decide collective-bargaining issues. As the First Circuit stated in *NLRB v. Living & Learning Centers*, 652 F.2d 209, 215 (1981): "To lay down such an absolute rule would enable an employer, by centralizing all matters of labor policy, to prevent the NLRB from selecting as appropriate a unit of smaller dimensions than the employer's whole enterprise even though that smaller unit was the one which in light of all relevant factors the NLRB determined would be appropriate under § 9(b) 'in order to assure to employees the fullest freedom in exercising the rights guaranteed' by the Act."

¹³ We also find no merit in the Employer's reliance on *NCR Corp.*, 236 NLRB 215 (1978), in which the Board dismissed the petition after finding a branch unit to be inappropriate. There, the Board relied, inter alia, on the integrated operation of the branch offices, the frequent interchange of employees, and the fact that employee functions and terms and conditions are identical. As described above, none of these factors are present here.

The Employer's reliance on *Ohio State Legal Assn.*, 239 NLRB 594 (1978), is similarly misplaced. There the petitioner sought to represent the professional and nonprofessional employees in all the employer's offices. The employer contended, inter alia, that the only appropriate unit was one limited to the employer's individual offices. The Board found the petitioned-for employerwide

dence indicates that the Echo Range and Range Support Services contracts do not constitute a separate administrative or operational grouping of the Employer. Thus these two contracts are but 2 of the 10 administered by the executive director involved in this case, and the two contract groups at China Lake do not work together, notwithstanding that they may perform work on the same naval mission at that site.

In sum we find that under either the presumption relied on by the Acting Regional Director or under a community-of-interest analysis, the record here shows

unit to be an appropriate one. In so finding it did not have to decide whether a unit limited to an individual office also might have been an appropriate unit.

that the petitioned-for unit of Echo Range employees constitutes a unit appropriate for the purposes of collective bargaining. We, therefore, affirm the Acting Regional Director's unit determination and remand this proceeding to the Regional Director for Region 31 for further appropriate action.

ORDER

The Board orders this case be remanded to the Regional Director for Region 31 for the purpose of opening and counting the ballots impounded after the election held on September 8, 1988, and for further appropriate action.