

Greenhorne & O'Mara, Inc. and United Archaeological Field Technicians, International Union of Operating Engineering, Local 141, AFL-CIO, CLC, Petitioner. Case 6-RC-11314

August 27, 1998

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HURTGEN

On August 16, 1996, the Regional Director for Region 6 issued a Decision and Order in the above-entitled proceeding, in which the Petitioner seeks to represent an employer-wide unit of all archaeological technicians¹ employed by the Employer in its Cultural Resources Division at any project or jobsite within the United States or any territory of the United States. The Regional Director concluded that the petitioned-for unit is not an appropriate unit because there is insufficient evidence to establish that there is a "key" or core group of employees employed by the Employer on a recurring, employer-wide basis.² Accordingly, the Regional Director dismissed the petition.

Thereafter, in accord with Section 102.67 of the Board's Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's decision, maintaining that the Regional Director erred in dismissing the petition. The Employer filed an opposition. By order dated February 27, 1997, the Board granted the Petitioner's request for review. The Board's Order invited the parties to address whether the Regional Director erred in requiring that the evidence establish that there is a group of "key" or "core" employees who are employed on a recurring, employer-wide basis, as well as the potential application and effect of the presumptive appropriateness of an employer-wide unit.³

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

Having carefully reviewed the entire record, including the parties' briefs on review, the Board concludes, contrary to the Regional Director, that the petitioned-for unit is appropriate for collective bargaining. The Board also concludes that the Employer failed to establish that the crew chiefs are statutory supervisors, or that the petitioned-for unit impermissibly combines professional and nonprofessional employees.

¹ Including field technicians, lab technicians, field lab technicians, and crew chiefs.

² The Regional Director, therefore, found it unnecessary to determine the alleged supervisory and/or professional status of the Employer's crew chiefs and field technicians.

³ On April 1, 1997, the Board denied the Employer's Motion for Clarification of the Board's Order of February 27, 1997. In so doing, the Board noted that a petitioned-for employer-wide unit, being one of the units listed in Sec. 9(b) of the Act as appropriate for bargaining, is presumptively appropriate.

I. FACTS

The Employer, an environmental consulting company with its headquarters and permanent laboratory located in Greenbelt, Maryland,⁴ performs studies for private and public sector clients in three primary areas—land development, transportation engineering and planning, and environmental services. While the Company gives advice and counsel to developers and other entities in the building industry, it performs no actual construction work.

The Employer's cultural resources division has performed work in 15 to 20 states, as well as in Puerto Rico. During the year preceding the hearing, the division worked on approximately 20 projects, including several for the Federal government⁵ and a few for small developers in Virginia and Maryland. These projects lasted anywhere from 2 to 5 days to 5 weeks. An average of three to seven field technicians and one to two crew chiefs were employed on each project.

In general, the work of the cultural resources division is to ensure that its clients are in compliance with the National Historic Preservation Act and the National Environmental Policy Act, as well as statutes administered by various state regulatory agencies. Under these statutes, before land may be developed, studies must be conducted to evaluate whether there are any cultural resources on the property, including archaeological and historic structures. The petitioned-for employees review records, perform reconnaissance to determine whether potential sites of interest exist, evaluate any cultural resources that are located on the property, determine the potential for eligibility in the national registry of historic places, and, if necessary, work to ensure that there is no adverse impact resulting from the development of the property.

The manager of the cultural resources division reports to the vice president of the Employer's environmental services division. The principal investigator assigned to each project and the director of the Greenbelt laboratory report to the cultural resources manager. The principal investigators (who work mainly in the Greenbelt office) manage personnel logistics, handle budgetary issues, act as the primary contact with the client and state regulatory agencies regarding archaeological issues, and supervise all levels of their respective projects.

⁴ The Employer also maintains offices in various states along the eastern seaboard and in Colorado.

⁵ E.g., such projects included work at both National and Dulles airports in the Washington, D. C. area, at Fort Campbell, Tennessee, and the Blue Grass Army Depot, Kentucky, and at the Coast Guard Academy in Connecticut.

Each project also is assigned a field director, who directly oversees a field crew composed of crew chiefs and field technicians. Two to four field technicians generally report to each crew chief, although the number of field technicians and crew chiefs varies depending on the size and complexity of the project.

The field technicians perform archaeological field excavation tasks (e.g., digging, sifting, identifying, marking and bagging artifacts) at the project site(s), as well as report-writing tasks. Laboratory technicians at Greenbelt wash, number and catalog artifacts which are received from all field projects, and enter data into a computer, while field lab technicians perform essentially the same duties on artifacts collected at a specific project.

Duties of the crew chiefs vary, depending upon the phase of the investigation. Thus, they perform field excavation duties as well as laboratory work; conduct historical research, artifact identification and analysis; review forms completed by the field technicians; help in the development of a field survey approach; give direction to the field technicians; and assist the field director or project manager in writing the project report.

At the time of the hearing, the cultural resources division had two active projects—both being performed for the Pennsylvania Department of Transportation. The first, a uniquely large and lengthy project, consisted of several sites in and around Myersdale, Pennsylvania, as well as an onsite field lab. The second, a more typical project both in size and length, was located in Bucks County, Pennsylvania. Richard Tinsman, the Employer's manager of cultural resources, testified that the Myersdale project, which had been ongoing since 1994, was scheduled to be completed on July 31, 1996, and that there was one remaining week's work to be done on the 3-week project in Bucks County, as well as additional lab work to be performed in Greenbelt which was expected to take approximately 2 months. Also, the Employer had an "indefinite quantity contract" with the United States Coast Guard in Norfolk, Virginia, which extended until spring 1997; however, as of the date of the hearing, the only work the Employer had performed on that contract was done by its environmental studies employees working in Greenbelt.

At the time of the hearing, there were 53 employees in the petitioned-for unit: 30 field technicians, 8 crew chiefs, and 2 field lab technicians at Myersdale (down from in excess of 100 technicians employed during the course of the first 2 years of that project); 4 field technicians at the Bucks County project; and 6 lab technicians and 3 crew chiefs in the Greenbelt laboratory.

The record shows that, prior to selecting employees for any particular field job, the Employer's field directors review all resumes on file in Greenbelt and prioritize applicants based upon their prior work for the Employer, with respect to the requirements of the specific project. There is no evidence that the Employer uses any geo-

graphical considerations when filling positions. Employees usually are given an estimate of the duration of the particular project when they are hired, and it is the Employer's general practice to lay off all field employees when a project is completed. Crew chiefs are retained for an unspecified period of time beyond the project's termination date in order to complete the necessary reports and analyses of project findings before they, too, are laid off. The Employer classifies its field employees as "temporary" and they are told that there is no expectation of being recalled when they are laid off. When their work on a particular project has been completed, they are classified as "terminated," and their personnel files are placed in an inactive file drawer. Although employees do not accrue seniority, the Employer maintains a "pool" of approximately 40 to 50 candidates for future field technician positions, including employees who have been laid off from previous projects. Employees in the Greenbelt lab, however, apparently are permanently employed.

I. UNIT SCOPE

The Regional Director rejected the Employer's contention that the petition should be dismissed because the Employer's project in Myersdale would be completed shortly after the close of the hearing and because it would have no other ongoing projects. However, the Regional Director dismissed the petition, finding that the record evidence is insufficient to demonstrate whether the Employer has a nucleus or core group of employees who are employed on a recurring, employer-wide basis.

We find that the Regional Director erred in dismissing the petition. As an initial matter, we agree with the Regional Director that the fact that the Myersdale project was scheduled to be completed shortly after the hearing or that the Employer would soon have no other ongoing projects does not warrant dismissal of the petition. As the Regional Director noted, the Employer's operations are analogous to those of the construction industry and other industries where work is obtained by a competitive bidding process, and employees work at multiple sites and are hired on a project-to-project basis. The Employer historically has had regular projects, although of limited duration. Further, the Employer maintains the continuous operation of its Greenbelt laboratory and has not indicated that it intends to terminate the lab techs who are employed there. Thus, in view of the Employer's substantial prior work, continuous operation of the Greenbelt lab, and continuing bidding on additional jobs, the fact that the majority of the employees in the petitioned-for unit may not have commitments for work at any given time does not establish that they will not secure work in the future or that former employees do not have a reasonable expectation of future employment. See, e.g., *Fish Plant Services*, 311 NLRB 1294, 1297

(1993). In addition, there is no evidence that the Employer would support a prediction that it would not obtain future work.⁶

We disagree, however, with the Regional Director's finding that "since employees are hired on a project-to-project basis, there must be sufficient evidence to establish that there exists a group of 'key' employees who are available and hired on such a recurring, employer-wide basis." *Fish Plant Services*, 311 NLRB at 1295. Rather, the existence of a core group constitutes but one factor in deciding if the petitioned-for unit is appropriate and is not controlling.

Here, the Petitioner seeks to represent all archaeological technicians employed by the Employer throughout its entire operations. The Employer contends that the unit must be limited to a single site. As the Petitioner seeks to represent a unit of employees on an employer-wide basis, we find that it is a unit which is, under well-established Board principles, presumptively appropriate under the Act. *Western Electric Co.*, 98 NLRB 1018 (1952). See also Section 9(b) of the Act;⁷ *Montgomery County Opportunity Board, Inc.*, 249 NLRB 880, 881 (1980); *Jackson's Liquors*, 208 NLRB 807, 808 (1974); *Livingstone College*, 290 NLRB 304 (1988).

It is, therefore, the Employer's burden to establish that the petitioned-for employerwide unit is inappropriate. However, the record evidence in the instant case is insufficient to rebut the presumptive appropriateness of the petitioned-for unit. As the Regional Director found, the majority of the petitioned-for employees are subject to the same wage rates, fringe benefits, work rules, and policies and procedures, all of which their immediate supervisors (i.e., the principal investigators) have no authority to change.⁸ There is no separate bargaining history for any of these employees. Also, although each jobsite is a separate project, there is no evidence that skills, duties, or working conditions of employees vary from project to project, with the exception of the fact that

employer has experienced a long period of lack of work the crew chiefs regularly work an extra 5 to 10 hours more per week to complete administrative paperwork.

Further, although the record does not establish that there is a core group of archaeological technicians employed on an employer-wide basis, it shows that the Employer has employed such technicians on projects other than the one for which they originally were hired, and has rehired employees who worked on previous projects.⁹ For example, two employees working at Myersdale at the time of the hearing had previously worked for the Employer on other projects, and approximately 40 percent of the field technicians who worked on the Army Corps of Engineers' project in Tennessee previously worked on the Myersdale project and requested work in Tennessee and Kentucky when bad weather interrupted the Myersdale project in late 1995. Tinsman testified that occasionally there is interchange between the lab employees in Greenbelt and field technicians. While seniority does not accrue, it is apparent that previous experience with the Employer is considered favorably when there is a new project to staff, and the Employer maintains a "pool" of approximately 40 to 50 candidates, including employees who have been laid off from previous projects, for reference in filling future jobs. The Employer does not claim it uses any geographical considerations in hiring.

Thus, it is clear that the Employer has centralized control over the terms and conditions of all of its employees, and that the Employer looks to a "pool" of employees, including those laid off from previous projects, in filling its positions. Further, contrary to the Employer, the record as whole demonstrates that there is a community of interest shared by the crew chiefs and the field and lab technicians who perform similar jobs, under similar working conditions for similar wages and benefits, to justify an all-inclusive unit. Accordingly, we find the petitioned-for unit appropriate, and find that the Employer has failed to sustain its burden of establishing that the employer-wide unit is inappropriate.

⁶ We disagree with the Employer's contention the majority of the petitioned-for employees must be excluded as "temporaries." The fact that many of the employees are hired solely for the duration of a particular project does not warrant their exclusion as "temporaries," as the Employer is engaged in operations where unusual employment patterns exist, and where employees are hired/laid off intermittently and may not work for extended, uninterrupted periods of time. See, e.g., *American Zoetrope Productions*, 207 NLRB 621, 623 (1973) (entertainment); *Hondo Drilling Co.*, 164 NLRB 416 (1967), enfd. 428 F.2d 943 (5th Cir. 1970) (oil drilling), *Seaboard Terminal Co.*, 109 NLRB 1095 (1954) (longshore work). We note that the Board has developed election rules and procedures to accommodate short-term and sporadic employment patterns. See *Steiny & Co.*, 308 NLRB 1323, 1325 (1992).

⁷ Sec. 9(b) provides, inter alia, that: "The Board shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

⁸ While the record does not contain specific wage information, the RD did find that the crew chiefs are paid approximately 20 percent higher wages than the technicians.

⁹ P. Exh. 1, the Employee Information form, asks whether the employee is a "G&O rehire," and makes clear to employees that "the Employer may find it necessary for them to perform in job assignments (and at other locations) other than the one for which they have been hired."

II. UNIT PLACEMENT ISSUES

The Employer contends that its crew chiefs must be excluded from any unit found appropriate because they are statutory supervisors. The record shows that the crew chiefs have been promoted from field technician positions. In addition, the record shows that the laboratory crew chiefs also are more senior employees who “do more independent kind of processing and data collection and identification.” The crew chiefs do not have the authority to hire, transfer, suspend, lay off, recall, promote, or discharge the technicians. The Employer alleges, however, that its crew chiefs possess supervisory authority on the basis that they assign and direct the work of the technicians, and have the authority to adjust employee grievances and to recommend discipline.

Contrary to the Employer’s contentions, we find that the crew chiefs’ limited role in assignment and direction of the field or lab technicians does not require the exercise of independent judgment, and, therefore, does not constitute statutory authority. Thus, the field crew chiefs “pair up” the field technicians, assign the routine tasks of digging or screening, and make certain that the technicians are digging in the right place, to the right depth, etc. Similarly, the lab crew chiefs’ assignment of routine tasks such as washing and data entry, or switching assignments if a technician complains that he is tired of doing one job, does not require the exercise of independent judgment. See, e.g., *Sears, Roebuck & Co.*, 292 NLRB 753, 754–755 (1989); *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890 (1997).

The Employer also has failed to demonstrate that the crew chiefs’ role in discipline or in resolving employee grievances meets the requirements of Section 2(11) of the Act. There is no evidence to indicate that the crew chiefs do any more than resolve minor disputes or complaints between employees, or that they perform any role in any formal grievance procedure. Further, Tinsman stated that no crew chief has ever recommended disciplinary action, and that all disciplinary decisions are made by the Human Resources Department at the Greenbelt headquarters. *Id.*

Accordingly, we find that the Employer has failed to demonstrate affirmatively that the crew chiefs exercise any 2(11) statutory indicia of supervisory status. See, e.g., *Bennett Industries*, 313 NLRB 491 (1994).

Finally, the Employer contends that the crew chiefs and field technicians are professional employees and therefore may not be included in a bargaining unit with non-professionals unless they expressly choose to be included. See *Sonotone Corp.*, 90 NLRB 1236 (1950). However, employees must satisfy each of the four requirements set forth in Section 2(12)¹⁰ before they qual-

ify as professional employees within this definition. See *Arizona Public Service Co.*, 310 NLRB 477, 482 (1993). The record in this case fails to support the Employer’s contention in at least two respects. Thus, the Employer has not demonstrated that the work engaged in by the petitioned-for employees—digging, screening, and cataloging artifacts for the principal investigator—is predominantly intellectual and varied intellectually, rather than routine mental, manual, and physical work. The Employer also has failed to establish that these positions require knowledge of an advanced type acquired by a prolonged course of specialized intellectual instruction and study. While the job descriptions for these classifications list as “minimum qualifications” a degree in anthropology or archeology or field school in archeology, Tinsman testified that some technicians have college degrees (in a variety of disciplines) and some do not. He further testified that even someone with a “dance degree” conceivably could be hired as a field or lab technician, depending on the “competitiveness” of their application. Thus, while an unknown number of the technicians or crew chiefs may have an appropriate advanced degree, it does not necessarily follow that the education characteristics of their work require the utilization of such advanced knowledge. See *Express-News Corp.*, 223 NLRB 627, 629 (1976). We conclude, therefore, that the petitioned-for employees are not professional employees.

ORDER

The petition is reinstated, and the case is remanded to the Regional Director for further appropriate action including the determination of the eligibility formula to be used and the direction of an election.

work; (ii) involves the consistent exercise of discretion and judgment; (iii) of such character that the result accomplished cannot be standardized in relation to a period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning; or any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a) and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

¹⁰ Sec. 2(12) of the Act defines a “professional employee” as: one who engages in work that is (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical

MEMBER HURTGEN, dissenting in part.

I agree with my colleagues that the absence of a core group of employees, as defined by the Regional Director, is not itself a sufficient basis for dismissal of the petition. I also agree that the case must be remanded for a "determination of the eligibility formula to be used." However, I would not, at this point, instruct the Regional Director to direct an election. The precise eligibility for-

mula to be used is presently uncertain, and it may turn out that a given formula results in few or no eligible employees. In addition, the Regional Director made no determination concerning the supervisory status of crew chiefs. Unlike my colleagues, I would not usurp the Regional Director's initial responsibility to make that Determination.