

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27

NORTHERN PIPELINE CONSTRUCTION  
COMPANY,

Employer,

and

Case 27-RC-7959

TEAMSTERS CONSTRUCTION WORKERS  
UNION, LOCAL UNION NO. 13

Petitioner.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, 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 powers in connection with this case to the Undersigned.

Upon the entire record in this case, the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

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<sup>1</sup> For the reasons set forth below, the Hearing Officer's ruling to allow the Petitioner to amend its petition at the hearing is hereby affirmed.

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 herein.

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

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

### **A. Statement**

Northern Pipeline Construction Company (“Employer”) is engaged in the construction of pipelines for utility companies in the State of Colorado.<sup>2</sup> In Colorado, the Employer operates from facilities in Commerce City, Boulder, South Denver (Sheridan) and Fort Collins. It also has facilities in Arizona. The Petitioner, Teamsters Construction Workers, Local Union No. 13, seeks to represent a unit of full-time and part-time truck drivers employed by the Employer at its locations in the Denver Metro area, including Boulder, Colorado.<sup>3</sup> This unit would consist of seven truck drivers. The Employer's position is that the petitioned-for unit is inappropriate because the truck drivers share a community of interest with other workers employed by the Employer.<sup>4</sup>

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<sup>2</sup> During any 12-month time frame, the Employer receives goods valued in excess of \$50,000 directly from suppliers located outside the State of Colorado. The Employer stipulated that it was engaged in commerce within the meaning of the Act.

<sup>3</sup> This represents the unit description as amended at the hearing.

<sup>4</sup> In April, 1999, the Employer voluntarily recognized and entered into a contract with Laborers International Union of N. A., Local 720, as the collective bargaining representative of the seven petitioned-for truck drivers. Unfair labor practice charges were filed by the Petitioner in Cases 27-CA-16402-1 and -2, resulting in a Settlement Agreement being approved by the Regional Director on August 5, 1999. As part of that Settlement Agreement, the Employer withdrew recognition from the Laborers Union. At the hearing herein, the Laborers Union disclaimed interest in the petitioned-for unit.

Therefore, the issue to be decided is whether the seven metro-area truck drivers constitute an appropriate unit.

## **B. Facts**

Currently, the Employer operates out of three facilities in the Denver Metro Area. Until recently, all seven of the truck drivers in the petitioned-for unit were employed at the Employer's facility in Commerce City, Colorado. In approximately late August or early September,<sup>5</sup> the Employer received authorization to park trucks at Public Service Company of Colorado's facility in Boulder. As a result, two of the seven drivers, who had been working out of Commerce City, began reporting for work in Boulder. Around that same time, the Employer also procured a yard in South Denver, more specifically in Sheridan, Colorado, to which one driver now reports.

Commerce City, Boulder, and Sheridan are all located in what is considered to be the Denver Metro Area. The Employer's yard in Fort Collins is approximately 65 miles from Commerce City and is not considered part of the Denver Metro Area. The truck drivers who work at the three different yards in the Denver Metro Area do not have contact with each other on a daily basis.

The Employer's Colorado supervisory organization is as follows. The highest ranking official of the Employer in Colorado is Regional Manager Ron Foxworthy. Foxworthy oversees the Employer's operations in Colorado. He works out of the Employer's office in Commerce City. Foxworthy reports to Vice President Mark Waumback, who is located in Arizona. The Employer has four superintendents in Colorado, Gary Duran, Darrell Roth, Brad Amick and Steve Quinonez, who all report to Foxworthy. Approximately six to nine foremen report to each superintendent. One to

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<sup>5</sup> The exact date this occurred is not clear from the record. Regional Manager Ron Foxworthy testified that it occurred approximately three-four weeks before the hearing on October 7, 1999.

three drivers and one to four welders report to each superintendent. The operators and laborers report to the foremen.

There are currently four truck drivers based at the Employer's Commerce City location. They are Eugene Clark, Bob Olsen, Mike Partridge, and Doug Porter. They report to Superintendent Gary Duran or Brad Amick.<sup>6</sup> There are also six to nine crews that report to Duran at the Commerce City location. Each crew generally includes a foreman, one or two operators, a welder, and one to two laborers. There is also a warehouse at the Commerce City facility, where there is one full time employee, warehouse manager Butch Cooper.

There are two truck drivers at the Boulder facility, Ron Morganflash and Ron Madron. They report to Superintendent Darrell Roth, who has an office in Commerce City. There is no physical Northern Pipeline facility in Boulder; the drivers report to the Public Service yard and get their assignments over hand-held radios from Roth or various crew foremen. In addition to the truck drivers, four laborers, two or three operating engineers, and two pipefitters now assemble at the Boulder location prior to reporting to their assigned locations for the day.

Since late August or sometime in September, truck driver Jim Howard reports to the "South Yard" in Sheridan, CO. Two superintendents, Brad Amick and Steve Quinonez, have offices at the Sheridan site. Howard reports to Amick. There are also an indeterminate number of laborers, approximately 15 operating engineers, and 8 pipefitters who report to the South Yard in Sheridan. The record does not indicate the approximate number of laborers, operating engineers, and pipefitters working for the Employer in Ft. Collins.

The Employer currently has collective bargaining relationships with three unions in Colorado: Laborer's International Union, Local No. 720 (Local 720); Operating

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<sup>6</sup> Ron Foxworthy testified that the drivers in Commerce City report to Duran. Mike Partridge, a driver who works in Commerce City, testified that he reports to Brad Amick.

Engineers Local No. 9 (Local 9); and Pipefitters Local 208 (Local 208). There are approximately 70 employees in the Laborers unit, 40 employees in the Operating Engineers unit, and 40 employees in the Pipefitters unit.

The laborers at the three facilities in the Denver Metro Area and Fort Collins are all in the same bargaining unit represented by Local 720 and are covered by the same collective bargaining agreement. The same is true for the operating engineers represented by Local 9 and the pipefitters represented by Local 208 at each of those locations. Except as noted in footnote 4 above, the truck drivers that the Petitioner seeks to represent have not been represented by any of the three unions with which the Employer has collective bargaining relationships.<sup>7</sup>

The seven truck drivers in the petitioned-for unit are the only individuals in the Denver Metro Area whose primary work assignment is to drive vehicles with a gross vehicle weight rating over 26,000 pounds. This requires them to have a Class A Commercial Driver's License, which requires special testing. The vehicles they drive consist of the Employer's four, ten-wheel, tandem axle dump trucks; two tractor trailer transports (low boys); and one eleven yard cement truck.

On a typical day, the truck drivers initially report to their respective Employer locations in Commerce City, Boulder, or Sheridan. They speak with a superintendent either in person or by radio, or speak with a foreman regarding the crews' needs for the day. Drivers do not report to a specific foreman each day. Rather, if a crew needs the assistance of a truck driver, a foreman calls the driver over the radio. The drivers also take orders from more than one superintendent on a regular basis. The truck drivers normally work five, eight-hour days, while at least some of the crews they service work four, ten-hour days. The drivers keep their own time records, which are signed by a superintendent. The drivers determine when overtime is necessary and work it

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<sup>7</sup> There is only a single part-time truck driver in Fort Collins. That driver is represented by Local 720 as part of that labor organization's contract with the Employer and is not at issue in this proceeding.

accordingly. If there is not enough driving work available to provide the truck drivers with a full eight-hour day, they have the option of working in the warehouse to make up the time. However, of the two truck drivers who testified at the hearing, one indicated that he has never worked in the warehouse, and the other has worked there on only a sporadic basis. Contrary to the other employees, the drivers have no scheduled breaks or lunches and take them, as their work permits.

Tandem dump truck driver Mike Partridge testified that he drives 90% of his work time and spends the other 10% waiting to load or unload his truck at the “Fry Pit” at Fry & Sons Corporation, loading his truck at a Public Service yard, or getting cold mix soil from Brannan Sand and Gravel. Partridge does not regularly utilize the same skills normally used by the laborers.<sup>8</sup> Concrete mixer truck driver Ron Morganflash testified that he spends approximately 75% of his work time driving and 25% of his time waiting to load or unload his truck. Morganflash testified that he also does not exercise any skills normally used by the laborers and that he does not normally assist the laborers or operators in spreading the flow fill his truck pours. While it is possible that the truck drivers could assist other members of the crew if they were at a site and had no work of their own to do, the truck drivers are not required to do so, and they do not do so on a regular basis.

The laborers, pipefitters, and operating engineers report to a foreman each day, and their time records are kept and signed by the foreman. The primary skills of the employees in the bargaining unit represented by Laborers Local 720 are basic knowledge of the type of construction the Employer performs. These employees perform a wide variety of general construction work. Some of the laborers carry fusion cards, and they connect polyethylene pipe. Some are required to know the Blue Stake Law because they assist the operators in pot-holing, and some are skilled in the use of

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<sup>8</sup> Typical laborer skills were described at the hearing by Foxworthy.

tools such as jackhammers, air compressors, clay spades, and compactors. The employees in the unit represented by Operating Engineers Local 9 have the same skills as the laborers, plus they operate and maintain various types of equipment for the Employer. Those employees in the unit represented by Pipefitters Local 208 have basically the same job description as the laborers, but, in addition, they perform pipefitting and welding for the Employer. There are certified welders in both the Pipefitters and Laborers units.

Except as provided through various collective bargaining agreements, the Employer provides no fringe benefits to its employees. The truck drivers have no vacation pay, health insurance, or pension benefits. Such benefits are provided to the employees in the Operating Engineers, Laborers, and Pipefitters units through the respective collective bargaining agreements. The organized employees' wages are also regulated by the collective bargaining agreements.

### **C. Findings**

Section 9(b) of the Act empowers the Board to determine whether a petitioned-for unit is "an appropriate unit." Nothing in the Act requires that the unit found appropriate be the only, or even the most appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). A major determinant in deciding what constitutes an appropriate unit is whether the employees petitioned for share a "community of interest" with one another. *Id.* Where a portion of a workforce is already represented, the Board determines whether the petitioned-for employees share a separate and distinct community of interest apart from the represented employees. *Carl Buddig and Company*, 328 NLRB No. 139 (1999). If the petitioned-for employees have a separate community of interest, they can constitute a separate appropriate unit. *Overnite Transportation Co.*, *supra*. The determination as to whether truck drivers have a separate community of interest depends on (1) whether the truck drivers and the other

employees have related or diverse duties, the mode of compensation, hours, supervision and other conditions of employment; and (2) whether they are engaged in the same or related processes or operations, or spend a substantial portion of their time in such adjunct activities apart from driving. *E.H. Koester Bakery Co.*, 136 NLRB 1006 (1962). The final determination comes from weighing all relevant factors.

I find that the facts herein establish that the petitioned-for full and part-time truck drivers have a separate community of interest and that they constitute an appropriate unit. In support of that finding, I note that the truck drivers serve a distinct function in the Employer's operation and have different duties from other employees, i.e. the seven truck drivers at issue are specifically employed to drive large trucks. They are the only employees of the Employer in the Denver Metro Area whose primary work assignment is to drive such vehicles. They possess different skills from the other employees, as evidenced by the requirement that they must have a Class A Commercial Driver's License to perform their jobs. The laborers, operating engineers and pipefitters are not required to have a Class A License and, thus, would not as a part of their job responsibilities, be qualified to drive the trucks driven by the petitioned-for employees. In the performance of their driving duties, the truck drivers at issue do not utilize the same skills or equipment used by the laborers, the operating engineers or the pipefitters. While the drivers make deliveries to the job sites, they do not remain on job sites and work with the crews after making their deliveries. They spend virtually all of their work time either driving or waiting to load or unload their trucks. Except for the cement truck, the trucks are generally loaded and unloaded by employees in the other units. The drivers are assigned no duties other than driving, but may work in the warehouse at their option, if there is not enough driving to be performed on a given day. They may at times assist a crew if they are not needed to drive at a specific time. Further, one driver testified that about once a month he might load his truck at a Public

Service yard if no one else is available to do it. However, drivers are not assigned these duties, nor do they perform them on a regular basis.

The truck drivers operate under a different wage scale from other employees and receive no benefits. The record does not establish the wage rates for the various employees nor any general comparison of the drivers' wage rates to those of other employees. Similarly, the employees represented by the three named labor organizations receive fringe benefits that are not received by the truck drivers in question.

As for working hours, it appears from the evidence that the drivers work a somewhat different schedule from the crew employees in the other units. The drivers work five eight-hour days, and at least some of the crews work four, ten-hour days. The record is unclear as to individual employees' specific schedules, however the evidence does indicate that the truck drivers occasionally work overtime as required to accommodate the work that needs to be accomplished on a given day.

The truck drivers also operate under a different supervisory structure from the other employees. The record indicates that the truck drivers have superintendents as their direct supervisors. They may or may not speak with their assigned superintendent each day, and they receive assignments from superintendents other than their direct supervisor. The truck drivers do not report to a specific foreman each day, as do the laborers and operators. The drivers receive calls over the radio from the various foremen over the crews they support when their assistance is required, and the drivers respond accordingly. The drivers determine when, where, and if they will take breaks or lunches, and if they will work overtime. They keep track of their own time, and the records are then approved by a superintendent. Basically, the truck drivers perform their work as they deem necessary to get the job done, and they receive orders from a number of different management officials. In summary, the drivers' supervision varies

substantially from that of the laborers and other employees, who are assigned to work in crews supervised by a specific foreman.

It is clear in this case that the truck drivers are not engaged in the same processes or operations as other employees, nor do they spend any substantial portion of their time performing functions other than driving. Though the drivers support the crews in some fashion, they perform none of the same functions. Their primary function is to drive trucks, and any other incidental work they perform is done voluntarily. Based on the record as a whole, the truck drivers have a separate community of interest, which negates any mutuality of interest with other groups of employees.

Finally, while the Employer claims that the petitioned-for unit is inappropriate, because the truck drivers share a community of interest with other employees, it is unclear to which unit the Employer asserts the truck drivers should belong.<sup>9</sup> It is

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<sup>9</sup> The brief submitted by counsel for the Employer was limited to argument concerning whether the Employer had been deprived of due process at the representation hearing herein by virtue of the Hearing Officer allowing the Petitioner to amend its petition at the hearing. In that regard the Employer notes that the petition filed by the Petitioner on August 23, 1999, sought an election among all truck drivers employed by the Employer at its Commerce City, Colorado location. At the hearing, the Petitioner amended its petition to include truck drivers of the Employer employed at its Denver metro and Boulder, Colorado locations. The Employer argues that by allowing the Petitioner to amend its petition, the Employer was deprived of due process, as it would have been able to present testimony and witnesses demonstrating that the multi-location unit described in the amended petition is inappropriate, had it known that the Petitioner sought to represent those employees.

The argument advanced by counsel for the Employer on brief ignores the fact that the amended petition seeks a vote among the exact same seven truck drivers as originally petitioned-for. As is set forth above, it was the Employer, who in late August or September, subsequent to the filing of the petition in this matter, changed the reporting locations for three of the petitioned-for truck drivers. In that regard, apparently for reasons of convenience, the Employer determined that two drivers should report to Public Service premises in Boulder and that one driver should report to a newly-established Employer premises in Sheridan. The Employer had no reasonable basis for assuming that the Petitioner would not seek to represent all seven employees, merely because the Employer had adjusted reporting locations for three of those drivers subsequent to the filing of the petition herein.

I also find the case authority cited by the Employer to be inapposite to the circumstances at issue. Specifically, the Employer cites *Alaska Roughnecks and Drillers Ass'n. v. NLRB*, 555 F.2d 732, 735 (9<sup>th</sup> Cir. 1977); *Blake Construction Co., Inc.*, 663 F.2d 272, 279 (D.C. Cir. 1981), and various cases cited in those matters, including *NLRB v. Jordan Bus Co.*, 380 F.2d 219, 223 (10<sup>th</sup> Cir. 1967), for the proposition that a meaningful requirement of due process is the opportunity to be heard at administrative hearings. The Employer also cites *NLRB v. I.W.G., Inc.*, 144 F.3d 685, 689 (10<sup>th</sup> Cir. 1998), on the issue that a due process violation requires a new hearing if the employer might have litigated the matter differently but for a lack of proper notice. The aforementioned cases and the authority upon which they are based are distinguishable from the facts in the instant matter. *Alaska* and *Jordan* both involved an employer who

significant that the other employees are separately organized and represented by the Operating Engineers, the Laborers, and the Pipefitters. Additionally, Laborers Local 720 has disclaimed any interest in representing the truck drivers, and neither Operating Engineers Local 9 nor Pipefitters Local 208 has expressed any desire to represent them.

#### **D. Conclusion**

Based on the foregoing, I find that the following employees constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

**Included:** all full-time and part-time truck drivers employed by the Employer at its locations in the Denver Metro Area, including Boulder, Colorado.

**Excluded:** all office clerical employees, salesmen, professional employees, drivers of crew trucks up to 15,000 pounds GVW, members of construction crews on the job sites of the Employer represented by other trade unions under contract with the Employer, guards, and supervisors as defined in the Act,.

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had no notice whatsoever of a representation hearing and, thus, no opportunity to fully participate in the hearing. *Blake* and *I.W.G.* both were unfair labor practice cases. In *Blake* the respondent had no notice of a particular unfair labor practice allegation, and in *I.W.G.* a potential respondent had not been put on notice that it could be jointly liable for the alleged unlawful conduct. In the case at hand, the Employer clearly had notice of the hearing by letter from the Regional Director on August 23, 1999 and in the formal Notice of Hearing dated September 29, 1999. Further, the Employer appeared and fully participated at the hearing. Moreover, the Employer had notice that the Petitioner was seeking to represent all seven of its unrepresented truck drivers, when the petition was filed on August 23, 1999. There is nothing in the record to support the Employer's apparent argument that it presumed the Petitioner no longer sought to represent the employees, who have been assigned by the Employer to different reporting locations subsequent to the filing of the petition. Further, this is the very type of issue that routinely arises in a hearing over the appropriateness of the unit. It is expected that a party who has notice of the hearing is prepared to proceed. Moreover, the Employer's witness at the representation hearing was its Regional Manager, a person who certainly had full knowledge as to the relocation of the reporting location for the employees at issue. Finally, the evidence is clear that the three locations now involved, Commerce City, Boulder, and Sheridan, are normally simply reporting locations for the truck drivers. The actual work performed by these employees is at construction projects located throughout the Denver Metropolitan Area. This circumstance did not change when the reporting locations were changed for three of the seven drivers.

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**TEAMSTERS CONSTRUCTION WORKERS UNION, LOCAL UNION NO. 13.**

## LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **3** copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-5433 on or before **October 29, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **November 5, 1999**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

**DATED** at Denver, Colorado this 22nd day of October, 1999.

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