UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SIXTH REGION

PIONEER CONCRETE OF ARKANSAS, INC.

Employer

and **Cases 26-RC-8151**
26-RC-8152

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION NO. 878

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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.[2]
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.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: [3]

GROUP A

INCLUDED: All full-time and regular part-time truck drivers, mixer drivers, loader operators, mechanics and mechanics helpers employed by the Employer at its Alexander and Jacksonville, Arkansas, 65th Street, Little Rock, Arkansas and Young Road (Maumelle), North Little Rock, Arkansas facilities.

EXCLUDED: All office clerical employees, batch plant operators, professional employees, technical employees, guards and supervisors as defined in the Act.

GROUP B

INCLUDED: All full-time and regular part-time maintenance employees, shop employees, tanker truck drivers and dump truck drivers employed by the Employer at its Smokey Lane facility in North Little Rock, Arkansas.

EXCLUDED: All office clerical employees, batch plant operators, professional employees, technical employees, guards and supervisors as defined in the Act.

If a majority of the valid ballots of either voting group in the election are cast for the Petitioner the employees of that voting group will be deemed to have indicated the desire to be included in the existing unit of drivers, mechanics, front-end loaders and laborers currently represented by Petitioner, and the Petitioner may bargain for those employees as part of that unit. If a majority of the valid ballots of either voting group are cast against representation the employees of that voting group will be deemed to have indicated their desire to remain unrepresented.

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 are employed during the payroll period ending immediately preceding the date of this 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 the status as such during the eligibility period and their replacements. Those in the military services of the United States Government 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 Chauffeurs, Teamsters and Helpers Local Union No. 878.[4]

LIST OF VOTERS

To ensure that all eligible voters 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 that may be used to communicate with them. ***Excelsior Underwear,*** 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Co.,*** 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the ***full*** names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper Objections are filed. ***North Macon Health Care Facility,*** 315 NLRB 359 (1994). In order to be timely filed, such list must be received in our Memphis, Tennessee Office (Region 26), 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **March 23, 2000**.

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 20570-0001. This request must be received by the Board in Washington by **March 30, 2000.**

DATED March 16, 2000, at Memphis, TN.

/s/

Frederick Calatrello
Acting Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
(Telephone: 901-544-0018/0019)

Classification Codes:

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[1] The Employer filed a brief, which has been duly considered.

[2] The parties stipulated that Pioneer Concrete of Arkansas Inc., herein the Employer, is an Arkansas corporation with places of business at several locations in Central Arkansas. The Employer sells ready-mix concrete to its customers. During the past twelve (12) months, a representative period, the Employer purchased and received materials valued in excess of $50,000 directly from points located outside the State of Arkansas. During the same representative period, the Employer sold and shipped products valued in excess of $50,000 directly to locations outside the State of Arkansas.

[3] Chauffeurs, Teamsters and Helpers Local Union No. 878, herein the Petitioner, currently represents employees in the following bargaining unit: lead truck drivers, truck drivers, mechanics, lead mechanics, front end loaders, and laborers employed by the Employer at its Conway, Arkansas and Smokey Lane in North Little Rock, Arkansas facilities. The Petitioner, by the petitions filed herein, seeks to represent all currently unrepresented employees in the following groups: (A) all full-time and regular part-time truck drivers, mixer drivers, loader operators, mechanics and mechanic helpers at the Employer's Alexander and Jacksonville, Arkansas, 65th Street in Little Rock, Arkansas and Young Road (Maumelle) in North Little Rock, Arkansas facilities and (B) all full-time and regular part-time maintenance employees, shop employees, tanker truck drivers and dump truck drivers at the Employer's Smokey Lane facility in North Little Rock, Arkansas. The Petitioner seeks separate self-determination elections in the two unrepresented groups. The Petitioner would represent both of these groups as part of the Conway, and Smokey Lane unit it currently represents. The Employer contends that a wall to wall unit involving all of its employees at its six facilities is the only appropriate unit and that all employees including the currently represented employees should vote as to whether they desire representation with their ballots being co-mingled and counted.

In March 1998 the Employer purchased the facilities named above, and others, from Charles Weaver. The purchased facilities involved herein were operating under the names of L & S Concrete Company, Gilliam Brothers Concrete and Webco. At that time a unit of drivers, mechanics, front-end loaders and laborers at facilities located on Smokey Lane and in Conway employed by L

& S Concrete were represented by Petitioner. This is the same unit currently represented by Petitioner with the exception that the record reflects that there are no employees in the mechanic and lead mechanic classifications currently employed in this unit. At the beginning of February, 2000 there were 23 ready mix drivers and two front-end loaders employed in this unit. Prior to the sale, a similar unit of truck drivers, front-end loaders, mechanic helpers and mechanics located at Jacksonville, Alexander, 65th Street in Little Rock and Young Road in North Little Rock, were represented by Local 382 of the International Union of Operating Engineers. These employees were employed by Gilliam Brothers Concrete. At the beginning of February, 2000 there 24 ready mix drivers and one front end loader employed in this unit . There were no employees in the mechanic helpers and mechanics classifications.

Finally, a group of unrepresented employees were employed by Webco. These employees were in the mechanic, maintenance, tanker truck and dump truck classifications. At the beginning of February, 2000 this group, which is also located at the Smokey Lane facility, included seven tanker truck drivers, three plant maintenance employees and three mechanics.

Initially, the Employer refused to recognize and bargain with either the Petitioner or Local 382. A Board Decision issued on December 31, 1998, ordering the Employer to recognize and bargain with both the Petitioner and Local 382 (Bd. Ex. 4, 327 NLRB No. 64). On February 9, 2000, Local 382 signed a waiver and disclaimed further interest in representing the former Gilliam Brothers employees (Bd. Ex. 5).

The Employer's regional manager is Rah Van Til. Van Til is responsible for the Employer's operations characterized as the Arkansas Region, which includes approximately fourteen (14) concrete plants. The Arkansas Region is divided into two areas - - the central Arkansas plants, which consist of the six facilities involved herein, and the southern Arkansas plants that include eight plants not involved in the instant case.

The management hierarchy for the central Arkansas plants includes Todd Terrell, Central operations manager, Mike Canard, production manager; Jim Pollard, shop manager; and Joe Benedetti, tanker/dispatch manager.

The ready mix drivers, front-end loaders and plant maintenance employees at the six central Arkansas plants are under Canard's supervision. Canard approves time off, vacations, gives work assignments and participates in the discipline of employees. However, all discipline is approved through the Little Rock office and the headquarters of the Employer's south central region in Houston, Texas. Canard works out of the Smokey Lane location.

Pollard supervises the shop mechanics who report to the shop facility at Smokey Lane. Pollard has the same supervisory responsibilities for shop mechanics as Canard has for the employees he supervises.

Benedetti dispatches and schedules the hours for the tanker drivers who report to Smokey Lane. Benedetti has the same supervisory authority over tanker drivers as Canard and Pollard have for their respective employees.

At each of the six batch plants where the ready-mix concrete is prepared there is one batch plant operator. Van Til testified batch plant operators are salaried supervisors and are considered to be a part of management. The batch plant operators are apparently responsible for delivering the ticket order assignments to the mixer drivers. According to Van Til, the batch operators are the immediate supervisors for the mixer drivers and other employees who work at each batch plant. Van Til testified the operators can effectively recommend discipline for all employees at the batch plant.. However, while Van Til stated that such recommendation would be effective, there is no other specific testimonial or documentary evidence in the record on this issue.

The Employer dispatches its mixer drivers from all six batch plants from its Young Road facility. There is a chief dispatcher, who also serves as one of two order takers, and three other dispatchers who perform their functions in the same room. One dispatcher dispatches trucks for the Conway, Jacksonville and Smokey Lane facilities. Another dispatcher dispatches trucks for the Alexander, 65th Street and Young Road plants. However, each dispatcher has direct contact with batch operators and drivers at all six plants on a regular basis.

Ready mix drivers are responsible for picking up ready mix concrete from one of the six batch plants and delivering it to a job-site. While they and their trucks are assigned to a particular batch plant, mixer drivers can be dispatched to any of the Employers' six batch plants three to four times a day to make deliveries to as many as five or six job sites. They typically will make sixty percent of their loads from their primary plant and forty percent from other plants. Ready mix drivers are hourly paid and are required to have a class B license. The Employer utilizes a two channel radio system to maintain contact with its mixer drivers and plants. The Conway, Smokey Lane and Jacksonville plants and mixer drivers utilize one radio frequency while the Alexander, Young Road and 65th Street plants utilize a second frequency. At the hearing herein Van Til stated that the Employer was in the process of obtaining a new license that would allow it to put all the plants and mixer drivers on a single channel frequency.

Front-end loaders are responsible for delivering the raw materials into bins so that it can be mixed with water to make cement. Front-end loaders are assigned to a particular plant site and normally do not move from plant to plant.

Tanker drivers are over the road drivers who pick up raw materials from various locations from around the state and deliver the raw materials to the six batch plants where the concrete is made. They also deliver concrete to outside companies. Tanker drivers are required to have a class A license to drive the larger trucks used to haul the raw material. Tanker drivers are paid based on a percentage of their haul and also receive the same hourly pay as mixer drivers for their break-down time.

There are three shop mechanics who are responsible for working on all mobile equipment including ready mix concrete trucks, front-end loaders and tanker trucks. While they primarily work out of the Smokey Lane mechanic shop, shop mechanics also perform work on vehicles at batch plants and at job sites as dictated by the needs of the Employer.

There are three plant maintenance employees based at the Smokey Road facility who are responsible for the upkeep and maintenance of the six batch plants. The plant maintenance employees service from two to three plants a day.

The benefits for employees are established by the Employer's Houston, Texas, office. All employees at issue here have the same benefits, e.g., vacation policies, holidays, drug policy, drug testing policy, health insurance, dental benefits and 401(K). All employees work under the same work rules and wear substantially the same uniform. While mixer drivers drive trucks assigned to a specific batch plant, all mixer trucks carry the same Employer emblem.

The record evidence establishes that there is a significant degree of interaction among the employees. Thus, although mixer drivers and their individual trucks are assigned to a particular batch plant they may be dispatched to any batch plant to pick up the product. Mixer drivers are dispatched from any one of the six plants to deliver products to the same customer or job-site. Shop mechanics, plant maintenance employees and tanker drivers all travel to and between the six plants in the regular performance of their duties. Additionally, mixer drivers, who have the required class A license for over the road driving occasionally fill in for tanker drivers who have reached the limit of their allowable hours pursuant to government regulations. Employees are allowed to transfer from one facility to another provided they have the skills to perform the available job.

Van Til testified that the cited practices of integration and employee interaction were in place and in effect on July 13,1998, the date of the aforementioned unfair labor practice hearing regarding the Employer's refusal to recognize and bargain with the Petitioner and Local 382.

It would be inappropriate to direct an election herein involving the appropriate historical unit represented by the Petitioner. First, there is no question concerning representation regarding the historical unit since no party

filed a petition seeking certification of that unit. Next, the Board has directed a "wall to wall" election, including the historical unit only in circumstances where (1) a question of representation exists in the historical unit; (2) the incumbent union seeks to add a previously unrepresented fringe group whom no other union is seeking to represent on a different basis; and (3) the exclusion derives from historical accident rather than from any real difference in functions or status creating a fringe defect in the historical unit. See D. V. Displays Corp.;Gallo Displays, Inc.; 134 NLRB 568, 571 (1961) It is clear that those required circumstances are not present in the instant case. Moreover, and as discussed below, in the instant case the currently unrepresented employees in the former Gilliam Brothers unit constitute an appropriate unit by themselves since there is no fringe group involved. Where, as here, an unrepresented group constitutes an appropriate unit a self-determination election is called for. Bell Bakeries of St. Petersburg of Ward Baking Company; 139 NLRB 1344, 1349 (1962). It is clear that the former Gilliam Brothers unit is an appropriate unit. The Board found this unit appropriate in its December 1998 decision. While the Employer may argue that circumstances have changed with respect to the centralized control of its operations, the record establishes that these so called changed circumstances existed at the time of the Board decision. The evidence in this record is insufficient to establish that the former Gilliam unit is now inappropriate. I shall, therefore order a self-determination election for this group.

The former Webco group of employees including full-time and part-time maintenance employees, shop mechanic employees, tanker truck drivers and dump truck drivers has never been represented. At the time of the hearing herein there were seven tanker drivers, three maintenance employees and three mechanics in this proposed voting group. The record reflects that there are no employees in the dump truck driver classification. However, the record does not reflect the duties of this job classification. The record evidence demonstrates that all of the former Webco group of employees report to the Smokey Lane facility where other employees are currently represented by Petitioner. However, with the exception of the shop mechanic classification, the classifications and duties of these employees are different from both the duties of employees currently represented by the Petitioner and the employees previously represented by Local 382. Thus, there is no indication that the maintenance employees are involved in the Employer's production and delivery operation of concrete. Likewise, the over-the-road tanker drivers who bring in the raw material are not involved in the day to day production or delivery of the finished concrete product to the employers customers. Moreover the tanker truck drivers have different supervision than do employees currently represented at Smokey Lane. On the basis of the record before me, I find that the unrepresented group of former Webco employees at Smokey Lane constitute an appropriate residual unit of employees. Accordingly, I shall also order a self-determination election for this group.

The record evidence demonstrates that Mike Canard, Jim Pollard, Todd Terrell, and Joe Benedetti possess and exercise supervisory authority and are supervisors within the meaning of the Act. I shall exclude them from the unit. The record is not clear with respect to the status of the batch plant operators. Van Til testified the operators were salaried and were supervisors and that they exercised some supervisory authority with regard to effectively recommending discipline of employees at the batch plants. This testimony, while not substantial, is uncontroverted. Moreover, I take administrative notice that batch operators were not included in either of the former L & S or Gilliam units. Furthermore, neither party seeks their inclusion now. Accordingly, I shall exclude them from the unit.

The record is inconclusive with respect to the community of interest status of dispatchers who were apparently excluded from the unit previously represented by Local 382. However, neither party has asserted that they are statutory supervisors. The dispatchers are not included in the voting groups currently sought by the Petitioner and the Employer's position with regard to this classification is unclear. Accordingly, I shall allow the dispatchers to vote subject to challenge.

There are twenty-six (26) eligible voters in the former Gilliam Brothers grouping.

There are thirteen (13) eligible voters in the former Webco grouping.

[4] 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.

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