

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

ADVANCED DRAINAGE SYSTEMS, INC.¹

Employer

and

Case 36-RC-6027

ASSOCIATION OF WESTERN PULP AND
PAPER WORKERS

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, hereinafter 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 proceeding², the undersigned finds:

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.

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:

All employees employed by the Employer at its Washougal, Washington facility; excluding office clerical employees, truck drivers, guards and supervisors as defined in the Act.

¹ The Employers name appears as amended at the hearing.

² Both parties filed briefs which have been considered.

The Employer manufactures high-density polyethylene drainage pipe at its facilities, including one in Washougal, Washington, the only one involved herein. The Employer asserts that three shift foremen, the fabrication manager and the yard manager are supervisors within the meaning of Section 2(11) of the Act and must be excluded from the unit. The Petitioner contends they are not supervisors and should be included in any appropriate unit. The Petitioner seeks an overall unit - essentially a production and maintenance unit - excluding long-haul drivers. The Employer argues the long-haul drivers share a community of interest with the other employees and must be included in any appropriate unit.

The Employer has five departments which manufacture, package, store and deliver the finished product to customers. All of these departments are under the overall direction of the plant manager. The departments are the manufacturing department, fabrication department, maintenance department, yard department and freight department. Raw material is manufactured into polyethylene pipe by the manufacturing department, or fabricated into special shapes by the fabrication department; then stored at the facility by the yard department. The finished product is delivered to customers by the freight department. The maintenance department maintains the plant equipment.

The manufacturing department consists of the assistant plant manager and three shift foremen, along with the production employees. The fabrication manager oversees the fabrication department employees. The yard department includes a yard manager and employees as well as the inventory service coordinator.³ The freight department is run by the dispatcher and inventory service coordinator and includes all drivers and a fleet mechanic. The maintenance department consists of three maintenance employees who report directly to the plant manager.

Supervisory Issues

There are five individuals at issue as to their supervisory status. These are the three shift foremen in the manufacturing department, the yard manager and the fabrication manager. The Union seeks inclusion; the Employer opposes same. The parties have stipulated to and the record supports the supervisory status of the plant manager, assistant plant manager, inventory service coordinator and the dispatcher. The parties also agree that the lead men in the yard department are not supervisors and should be included as employees in any appropriate unit. Section 2(11) of the Act defines the term "supervisor" as any individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employee, or to responsibly direct them or adjust their grievances, or to effectively recommend any of such actions. This list is interpreted in the disjunctive; the possession of any one of the supervisory criteria qualifies that individual as a supervisor. Any such authority must require independent judgment in order to qualify. *Pepsi-Cola Co.*, 327 NLRB No. 183 (1998).

The record shows that all five disputed individuals have essentially the same authority and responsibilities regarding employees in their respective departments. The fabrication manager has 10 subordinates, the shift foremen 10-15 each (depending on season). The record does not reflect the number of yard employees. When there is an opening for a new employee, the relevant individual in question screens applicants and winnows the applicant pool

³ The inventory service coordinator has functions in both the yard and freight departments and reports to the plant manager.

down to two or three⁴ applicants, making a recommendation as to who should be hired. The individual then interviews the recommendees, along with the plant manager. A joint hiring decision is then made. Rejection of applicants does not constitute supervisory status if the rejecter is merely culling applicants lacking specific criteria. *Cassis Management*, 323 NLRB 456 (1997). Here, the record is unclear as to really what happens in the winnowing process.

These individuals each administer discipline to employees. They have the authority and do exercise that authority to administer verbal and written discipline to employees in their departments, including suspensions. While the record is not completely clear on this issue, it does appear as if the Employer has a progressive disciplinary policy in place and each act of discipline will ratchet up future consequences, ultimately resulting in termination. The plant manager receives a written notification of all discipline - often after the fact - but does not independently investigate discipline unless it involves possible termination. He has never rejected the disciplinary action taken by one of the individuals in question.

The foremen and managers also have independent authority to promote employees, assign employees to specific tasks and approve overtime. The record also shows instances of transfers between departments (agreed upon by both sender and receiver) and promotions to leadman taking place without the prior approval of the plant manager. The foremen and managers also independently prepare employee evaluations on a regular basis; it appears that a positive evaluation is necessary for an employee to receive his regular longevity increase. A few appraisals have been rejected, the alleged supervisor on one occasion being told to "beef up" the appraisal to justify a raise (it was, and the raise was granted) or to moderate the appraisal tone (while keeping the raise rejection recommendation). With respect to other wage increases, outside the established range, it appears that such raises are the call of the plant manager. The record mentions only a couple such situations. It is unclear if those mentioned are samples, or an exhaustive list.

These five individuals also are paid more than the rank and file employees, have office space in the administrative area and attend management meetings.

I find that the shift foremen, yard manager and fabrication manager are supervisors within the meaning of Section 2(11) of the Act and are properly excluded from the appropriate unit. They all possess more than one of the supervisory activities listed in Section 2(11) of the Act. At a minimum, each possesses the authority to discipline, promote, and transfer. They also appraise, a favorable approval being a pre-requisite for a raise - thus, essentially granting raises. In each case, their authority borders between fully independent authority and effective recommendation. Either will suffice. Any one of these criteria would be sufficient to qualify them as supervisors. I also note that if they are not supervisors, then there is an abnormally high employee/supervisor ratio in the manufacturing/fabrication area, of about 45/2.

Truck Drivers

The Petitioner seeks to exclude long-haul truck drivers from any appropriate unit. The Employer claims that all truck drivers, including the long-haul and local drivers, are effectively integrated with the other employees so as to preclude their exclusion from any overall unit. All of the drivers are employed in the freight department, which is supervised by the dispatcher or the inventory service coordinator (in the absence of the dispatcher). The Employer utilizes two

⁴ The record cites one example of 10 applications being narrowed down to three finalists.

types of drivers, long-haul and local. The function of all of the drivers is to deliver the product to customers and occasionally to deliver inventory from one of the Employer's facilities to another facility. Long-haul drivers are defined by Department of Transportation regulations as those who deliver to locations outside a 100-air-mile radius of the Employers facility. Local drivers deliver within the 100-mile zone. Long-haul drivers are paid on a mileage basis (plus some hourly rates in certain situations), while local drivers are paid on an hourly basis. All drivers (except one of the local drivers) have a class A commercial driver's licenses; all are required to keep driving logs. The driving logs are used for payroll and regulatory purposes for the long-haul drivers and for regulatory purposes for the local drivers. The local drivers do not perform long-haul functions, but the long-haul drivers routinely do local deliveries as the needs of the business dictate. When the long-haul drivers perform local driving, they are paid by mileage or hourly, depending on which is most advantageous to the driver. Local drivers rarely perform deliveries which require them to stay overnight, but long-haulers often do. The exact frequency is unclear from the record.

All drivers, with one exception, operate tractor/trailer combinations. One of the local drivers (without the class A CDL) operates a large pick-up truck which is primarily utilized for small local deliveries. All drivers normally do not participate in the loading of their vehicles, but it does occur on occasion. Typically, a long haul driver will arrive at the Employer's facility, pick up his paperwork and then take the loaded truck for delivery. They may interact briefly with the yard department if there are any loading problems, but the trailer is usually pre-loaded and the long-haul driver just takes the vehicle and leaves for the road. Loads are normally filled from warehouse inventory, rather than coming directly off the production line onto the trailers. Long-haul drivers typically spend 95% of their time on the road away from the plant. Local drivers operate in much the same manner, except they will return to the plant more frequently for additional loads during the course of a day. The record reflects the local drivers spend in excess of 60% of their time away from the plant. As a rule, the drivers do not perform any plant functions with the exception of occasional loading operations. During the last slow season (winter), two drivers did perform yard department work rather than be laid off, but the record does not indicate if this is a routine occurrence occurring every slow period.

The inclusion of drivers in more comprehensive units is not required by the Board. *E.H. Koester Bakery*, 136 NLRB 1006 (1962). In that case the Board rejected a blanket policy of including truck drivers in more comprehensive units and returned to evaluating each case based on a community of interest determination. The factors on which the Board relies upon in cases of this nature include 1) whether, compared to other employees, they have related or diverse duties, mode of compensation, hours, supervision and other conditions of employment and 2) whether they are engaged in the same related process or operation, or spend a substantial portion of their time in such production or adjunct activities. *Koester*, supra, at 1011. In the instant case the drivers are solely involved in the transportation of the Employer's products as opposed to the production process, the long-haul drivers are compensated differently, they work different hours, are absent from the premises most of their working time, are separately supervised, and there is no significant interchange or overlapping duties. On this basis and on the record as a whole I find that the long-haul drivers do not have a sufficient community of interest with the rest of the production and maintenance unit to mandate their inclusion over the objections of the Petitioner, and are therefore properly excluded. See *Overnight Transportation Company*, 331 NLRB No. 85 (2000).

The local drivers share many of the terms and conditions of the long-haul drivers, although they are paid on an hourly basis as opposed to the mileage-and-hourly combination of the long-haul drivers. The local drivers do spend most of their working day away from the

facility, are separately supervised by the same dispatcher as the long-haul drivers, do not perform production tasks, are subject to some of the same transportation regulations as are the long-haul drivers. There is significant overlap between the long-haul drivers and the local drivers in that the long-haul drivers perform local driving tasks a significant portion of the time. While there are some differences, it would be incongruous to align the local drivers with the overall production Unit. Their interests are more closely aligned with those of the long-haul drivers. They all work in the same department, have little contact with the rest of the unit, are both gone from the facility a majority of the time and both are performing essentially the same function, using the same equipment. I shall also exclude the local driver(s) from the Unit. This work is more closely related to the other drivers' than it is to the rest of the Unit.

There are approximately 50 employees in the Unit.

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 be issued 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 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 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 ASSOCIATION OF WESTERN PULP AND PAPER WORKERS.

LIST OF VOTERS

In order to assure 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 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 hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for Subregion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Subregional Office, 601 SW Second Avenue, Suite 1910, Portland, Oregon 97204, on or before October 30, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be

made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by November 6, 2000.

DATED at Seattle, Washington, this 23rd day of October, 2000.

/s/ PAUL EGGERT

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