

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

WHITE'S CRANE SERVICE, INC.,
AN alter ego OF WHITE'S STEEL, INC.
D/B/A WHITE'S CRANE SERVICE¹

Employer

and

Case 21-RC-20352

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 12, AFL-CIO

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 proceeding, 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.

¹ The Employer's name is corrected based on the record in its entirety.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and seeks 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 an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time crane operators and crane oilers employed by the Employer at its facility located at 45-524 Towne Center, Indio, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.²

At issue is whether White's Crane Service, Inc. is the alter ego of White's Steel, Inc. d/b/a White's Crane Service (hereinafter referred to as White's Crane Service) and meets the Board's jurisdictional standards as defined in the Act.

The Employer acknowledges the Board's jurisdiction with respect to White's Steel, Inc. However, the Employer argues that White's Crane Service, Inc. is not engaged in commerce and, therefore, does not meet the Board's jurisdictional standards. Conversely, the Petitioner contends that White's Crane Service, Inc. is a successor

² The parties stipulated to the appropriateness of the unit.

entity, single employer, joint employer or alter ego to White's Crane Service and that since the Board has jurisdiction over the latter entity it also has jurisdiction over White's Crane Services, Inc.

White's Steel, Inc., whose place of business is located at 45-524 Towne Street, Indio, California was incorporated in 1996. Its business consists of fabricating, erecting and selling steel. At the time of the hearing, it also operated out of the same above-noted offices, a crane rental service known as White's Crane Service.

White's Steel, Inc. operated White Crane Service for approximately 1½ years as the crane operation segment of the business. Its operations consist of providing crane rental service for landscape operators, general contractors, as well as for White's Steel, Inc. I find based on the parties' stipulation³ and the record as a whole that White's Steel, Inc. d/b/a White's Crane Service is engaged in commerce and satisfies the Board's jurisdictional standards.

On February 16, 2001, a new corporation known as White's Crane Service, Inc. was created by virtue of the filing of Articles of Incorporation with the Secretary of State of California. At the time of the hearing, White's Crane Service, Inc. had not engaged in any business transactions, but the record reveals that it was "in the process of switching over" and that it was anticipated that as of July 5, 2001, White's Crane Service would cease to

exist, and the entire crane operation formerly known as White's Crane Service would thereafter be conducted by White's Crane Service, Inc.⁴

According to Edwin J. Neumeyer, the president of White's Steel, Inc., White's Crane Service, Inc. was created due to "strictly a liability issue that our attorney, corporate attorney and out(sic) accountant had - the crane service is a very small part of our overall corporation of White's Steel and the liability there is just too great." Neumeyer is also vice president of White's Crane Service, Inc.

The Board has held that two enterprises will be found to be alter egos where they have substantially identical management, business purpose, operation, equipment, customers and supervision as well as ownership. See Denzel S. Alkire, 259 NLRB 1323 (1982); Elec-Comm, Inc., 298 NLRB 705 (1990).

The record reveals that White's Crane Services, Inc. and White's Crane Service have substantially identical management, supervision and ownership. For example, Neumeyer and Colin Dove are partners and co-owners of the two entities. Neumeyer, vice president of White's Crane Service is also the vice president of White's Crane Service, Inc.

³ Subsequent to the closing of the record, the parties executed a commerce stipulation.

⁴ After the closing of the record, the Employer submitted a "Statement of Abandonment of Use of Fictitious Business Name" which it filed with the County of Riverside, California. The document indicates that on July 6, 2001, the Employer abandoned use of the name White's Crane Service.

Dove, president of White's Crane Service, continues in that position at White's Crane Service, Inc. The record also discloses that James Boglino is the controller for both White's Crane Service and White's Crane Service, Inc. Boglino is also in charge of the daily operations of White's Crane Service, and he will continue in that capacity at White's Crane Service, Inc., in conjunction with Neumeyer.

The record also reveals that White's Crane Service and White's Crane Service, Inc. have substantially identical business purpose, operation, equipment, customers. In connection with the switch from White's Crane Service to White's Crane Service, Inc., there will be no change in the services it offers, in the manner of operation, in the individuals employed, in the equipment used⁵, or in the customers which it services.

Based on the foregoing, it is concluded that White's Crane Service and White's Crane Service, Inc. have substantially identical management, business purpose, operation, equipment, customers and supervision as well as ownership. Accordingly, I find that White's Crane Service, Inc. is the alter ego of White's Crane Service.⁶ Further, given my earlier finding that White's Steel, Inc. d/b/a White's Crane Service meets the Board's jurisdictional standards, I conclude that White's Crane Service, Inc., as

⁵ Neumeyer did not know whether the cranes used in the operation, presently owned by White's Steel, Inc., would be formally sold or leased to White's Crane Service, Inc.

the alter ego of White's Crane Service, also satisfies the Board's jurisdictional standards.⁷

There are approximately 6 employees in the appropriate 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 are 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

⁶ Given my finding that White's Crane Service, Inc. is the alter ego of White's Crane Service, I do not address the Petitioner's successor, single employer, and joint employer contentions.

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 **International Union of Operating Engineers, Local 12, AFL-CIO.**

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); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or before

⁷ The named employer on the Notice of Election and on the ballots will be White's Crane Service, Inc. an alter ego of White's Steel, Inc. d/b/a White's Crane Service.

July 18, 2001. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(contract) of the Board's Rules and Regulations requires an employer to notify the Board at least five (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 National Labor Relations Board 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EDT, on July 25, 2001.

DATED at Los Angeles, California, this 11th day of July 2001.

Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

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