**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 32**

(Oakland, California)

AMERON INTERNATIONAL,

Employer

and

LEE TAYLOR, AN INDIVIDUAL, Case 32-RD-1409

Petitioner

and

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 73,

Union

## 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,[1] the undersigned finds:

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

[1] The Employer and the Union submitted briefs, which have been considered.

2. The parties stipulated, and I find that the Employer is engaged in the manufacture and sale of concrete and steel pipe at its facility located at 10100 West Linne Road in Tracy, California. During the previous twelve months, the Employer has purchased and received goods valued in excess of $50,000 directly from suppliers located outside the state of California and has furnished goods and services valued in excess of $50,000 to users located outside the state of California.

3. The parties stipulated, and I find that Laborers' International Union of North America, Local 73, hereinafter referred to as Local 73, is a labor organization within the meaning of Section 2(5) of the Act.

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, hereinafter referred to as the bargaining unit, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED**: All production and maintenance employees employed at the Employer's facility located at 10100 West Linne Road in Tracy, California.

**EXCLUDED**: All executives, office, clerical, guards, timekeepers and all supervisory employees as defined in the National Labor Relations Act.[2]

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[2] It is well settled that the unit appropriate in a decertification election must be coextensive with either the certified or recognized bargaining unit. *Fast Food Merchandisers, Inc.*, 242 NLRB 8 (1979). Here, there was no certification of representative, but the Employer has recognized and bargained with the Union since 1989, and the unit sought by the Petitioner is coextensive with the unit recognized by the Employer in its collective bargaining agreement with the Union.

6. The parties stipulated, and I find that under the collective bargaining agreement between the Employer and the Union, employees who are laid-off maintain their seniority rights for eight months after the lay-off. Thus, I find that employees who are on lay-off status for eight months or less are included in the bargaining unit.[3] There are approximately 145 employees in the unit.[4]

7. Local 73 contends that the Northern California District Council of Laborers, hereinafter referred to as the District Council, not Local 73, is the recognized bargaining agent for the bargaining unit. Local 73 also argues that by naming Local 73 as the collective-bargaining representative of the bargaining unit, Petitioner failed to name and serve the petition on the recognized bargaining agent, and therefore that the Petition should be dismissed.

8. The District Council is an organization composed of labor organizations and exists for the purpose of representing employees in collective bargaining negotiations and the resolution of grievances. Local 73 is a member of the District Council. I take administrative notice that the Board has upheld a finding that the District Council is a labor organization within the meaning of Section 2(5) of the Act.[5]

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[3] Local 73 requested that the adequacy of the showing of interest be reconsidered in light of the fact that the bargaining unit is considerably larger than indicated on the petition. The sufficiency of the Petitioner's showing of interest is an administrative matter not subject to litigation. *O. D. Jennings and Company*, 68 NLRB 516 (1946). I have administratively determined that the Petitioner's showing of interest is adequate.

[4] This figure includes about 115 employees who are currently working and about 30 employees who are currently laid off, but have been laid off for eight months or less.

[5] The record supports a finding that the District Council exists for the purpose of representing employees in collective bargaining negotiations and the resolution of grievances. However, there is no evidence in this record as to whether or not employees participate in the District Council. In *Laborers Local 294 (AGC of California),* 331 NLRB 259 (2000), the Board upheld a finding that the Northern California District Council of Laborers is a labor organization based on facts similar to those in the record here: "Northern California District Council of Laborers (the District Council) has been an organization composed of various labor organizations, one purpose of which is to represent its constituent member-labor organizations in negotiating and administering collective-bargaining agreements. . . At all times the Union has been a constituent

9. The Employer contends that Local 73 and the District Council are joint representatives, that Local 73 is an affiliate member of the District Council, and that Local 73 is an agent of the District Council, which has acted on behalf of the District Council throughout the parties' collective bargaining relationship; therefore, notice to and service of the petition on Local 73 is notice to and service of the petition on the District Council.

10. For the reasons set forth below, I find that Local 73 and the District Council are recognized jointly by the Employer as the exclusive collective bargaining representative of the bargaining unit; therefore, Local 73 and the District Council are joint representatives, and by naming Local 73 as the bargaining representative, the Petitioner effectively named and served the petition on the recognized bargaining representative.

## THE FACTS

The Employer manufactures concrete and steel pipe at its facility in Tracy, California. In 1989, the Employer voluntarily recognized and began bargaining with a union.[6] There is no testimonial or other evidence regarding the origination of the bargaining relationship or the name of the labor organization or organizations that obtained majority support. Attorney for the Union, Paul Supton, represented that the Employer recognized the District Council and that the District Council had obtained majority support.[7] Supton further represented that he negotiated the first collective bargaining agreement on behalf of the District Council and that the first collective bargaining

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member-labor organization of the District Council. The District Council and the Union each have been a labor organization within the meaning of Section 2(5) of the Act." *Id*. at 264.

[6] There is no certification of representative naming the bargaining agent or describing the bargaining unit.

[7] Supton made this and other representations for the record, but did not take the stand to testify as a witness.

agreement may have named only the District Council.[8] He could not remember whether Local 73 was also first named in a collective bargaining agreement, but stated that "over the years somehow Laborers' 73 has also gotten onto the contract."[9] Supton also represented that the bargaining relationship has always been joint, stating that the District Council and Local 73 have always been the representative of the bargaining unit. The Employer's attorney, Kyle Brown, represented that there is no dispute that the two labor organizations jointly represent the bargaining unit.[10]

There is ample record evidence regarding the current nature of the bargaining relationship. Lynn Pindar, a representative of the Employer[11] who was called as a witness by the Union, testified that he was involved in negotiating the current collective bargaining agreement on behalf of the Employer.[12] Pindar acknowledged that both the District Council and Local 73 were present for negotiations and that attorney Supton was their spokesperson at the bargaining table. Pindar further testified that both Local 73 and the District Council represent employees regarding grievances. Pindar stated that grievances are typically handled by Local 73 at the early stages, but if a grievance is not resolved at an early stage, the District Council becomes involved. However, Pindar also acknowledged that the District Council is often involved in a grievance from the beginning. Attorney

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[8] No party offered the first contract into evidence. Supton was the only person present at the hearing who was involved in negotiating the first collective bargaining agreement.

[9] Supton's representations suggest that there has been a series of collective bargaining agreements between the Employer and the Union since 1989; however, no party offered evidence as to how many such agreements there have been, and, and only the current collective bargaining agreement was put in evidence.

[10] Brown made representations for the record, but did not take the stand to testify as a witness.

[11] Pindar made an appearance on the record for Ameron International, but there is no record evidence as to Pindar's position, title or job duties.

[12] The parties' current collective bargaining agreement is effective January 1, 2000 to December 31, 2002.

Supton represented that only one grievance has gone to arbitration, and the District Council handled the arbitration exclusively.[13]

In addition to Pindar's testimony, the parties' current collective bargaining agreement was received into evidence. The collective bargaining agreement itself clearly states in the Preamble that the agreement is between the Employer and "Northern California District Council of Laborers and Laborers Local Union No. 73, affiliated with the Laborers' International Union of North America, AFL-CIO, hereinafter referred to as the Union." After this description of "the Union" in the Preamble, there is no further mention of either the District Council or Local 73. The remainder of the collective bargaining agreement simply refers to "the Union, " and in the recognition clause immediately following the Preamble, the language clearly states that the Employer "recognizes the Union as the sole collective bargaining agency" for employees in the bargaining unit. I also note that both the District Council and Local 73 have signed the signature page of the contract.

## ANALYSIS

Where the term "Union" is clearly defined in a contract as including two labor organizations as the sole collective bargaining representative, those labor organizations are joint representatives. *Adobe Walls, Inc.,* 305 NLRB 25, 26, 27 (1991). Evidence of joint representative status can also be found in the bargaining process. A single, chief spokesperson representing more than one labor organization in negotiations for a single

[13] Supton's representation that the District Council handled the arbitration exclusively does not contradict the District Council's status as a joint representative of the bargaining unit. While handling an arbitration for a bargaining unit member pursuant to the parties' collective bargaining agreement, the District Council was acting on behalf of the District Council and Local 73, who jointly comprise the Union. Supton did not suggest that by handling the arbitration exclusively, the District Council was acting exclusively on its own behalf, rather than on behalf of both itself and Local 73.

contract covering a single bargaining unit is evidence that the labor organizations are joint representatives. *International Paper*, 325 NLRB 689, 691 (1998). A single collective bargaining agreement covering a single bargaining unit that is signed by more than one labor organization is also evidence that the labor organizations are joint representatives. *Id*. Here, both the District Council and Local 73 are signatories to a single collective bargaining agreement with the Employer covering employees in the bargaining unit. Both the District Council and Local 73 were present at the bargaining table to negotiate the contract, with attorney Supton acting as the single, chief spokesperson. The contract itself makes clear that there are two parties to the contract, the Employer and "the Union." Most significantly, the contract unambiguously states that the District Council and Local 73 are referred to as "the Union"[14] and that the Employer recognizes "the Union" as the sole collective bargaining agent for the bargaining unit. Thus, I find that the District Council and Local 73 are joint representatives of the bargaining unit.

Board law consistently treats joint representatives as a single entity. "It has been well settled that where there were joint bargaining entities, be they employers or unions, the Board has treated them as a single de jure entity, and the conduct and knowledge of one is imputed to the other." *U.S. Pipe & Foundry Co*., 247 NLRB 139, 142 (1980).[15] As joint representatives, the District Council and Local 73 are a single de jure entity. Thus, I find

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[14] The Preamble to the contract reads: "This Agreement entered into this 1st day of January, 2000 and between the Ameron International, Concrete & Steel Pipe Group, Northern Division, hereinafter called the Company, and Northern California District Council of Laborers and Laborers Local Union No. 73, affiliated with the Laborers' International Union of North America, AFL-CIO, hereinafter referred to as the Union."

[15] *See Pharmaseal Laboratories*, 199 NLRB 324 (1972) (The signature of one of the joint representatives was sufficient to make a contract adequate for contract bar purposes, even though the other joint representative did not sign. The Board held there were only two de jure parties to the contract, the employer and the joint representative, and thus only two signatures were required.) *See also* Ref-Chem Co., 169 NLRB 376 (1968) (An unfair labor practice charge naming only one of two joint employers constitutes a charge against both joint employers.)

that notice to and service on Local 73 constitutes notice to and service on the joint representative, the District Council.

The instant petition raises a question concerning the representation of the bargaining unit. The District Council and Local 73 are the joint representative of the bargaining unit, and the joint representative has received notice of the petition. Accordingly, I find it necessary and appropriate that both the District Council and Local 73 be included in the election to resolve the instant question concerning representation of the bargaining 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.[16] 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. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. 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

[16] Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

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 to vote shall vote whether or not they desire to be represented by NORTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS and LABORERS' LOCAL UNION NO. 73, affiliated with the LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO.[17]

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 in 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); *North Macon Health Care Facility*, 315 NLRB 359, 361, fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an 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. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before November 22, 2002. No extension of time to file this list shall be granted except in

[17] Per the parties' collective bargaining agreement, this is "the Union" recognized by the Employer as the sole collective bargaining agent for employees in the bargaining unit.

extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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, DC 20570. This request must be received by the Board in Washington by November 29, 2002.

Dated at Oakland, California this 15th day of November, 2002.

Alan B. Reichard
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