

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

PACIFIC ROCK PRODUCTS, LLC

Employer

and

Case 36-RC-6150

GENERAL TEAMSTERS LOCAL UNION NO. 162,
AFFILIATED WITH INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, 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 record¹ in this proceeding, the undersigned makes the following findings and conclusions:²

Summary

The Employer is a Washington corporation engaged in the business of producing and selling concrete, aggregate rock products and asphalt to both commercial and private customers. The Petitioner seeks to represent a unit of concrete truck drivers located at three of the Employer's seven metropolitan Portland, Oregon facilities. The Employer contends the proposed unit is too narrow and argues the **only** appropriate unit should consist of all of its drivers at all seven facilities. Based on the following facts and analysis, I reject the Employer's contention and find that the concrete drivers are an appropriate unit and I shall, therefore, direct an election in such a unit.

Background

The Employer operates seven facilities in and about the metropolitan Portland, Oregon area producing and selling construction materials consisting of concrete, aggregate rock and asphalt. These facilities are located along a north-south axis running from Lewisville, Washington in the north to Canby, Oregon in the south, a distance of approximately 60 miles.

¹ Both parties filed timely briefs, which were duly considered.

² The hearing officer's ruling made at the hearing are free from prejudicial error and are hereby affirmed. 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. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) of the Act and Section 2(6) and (7) of the Act.

The corporate offices and headquarters are located in Vancouver, Washington at a location known as Orchards. Orchards is approximately 20-25 miles south of Lewisville and 35 miles north of Canby. Just south of Orchards are two additional facilities known as English (3 miles from Orchard) and Fisher (5 miles from Orchard). The facility known as Foster is located about 25 miles south of Orchard.³

Concrete is produced and sold from only three of these locations, Orchards, Foster and Canby and the concrete drivers at issue are based at those three facilities. Aggregate rock is produced and sold from all facilities except Foster and asphalt is produced only at the Foster and Orchard locations.

The concrete drivers drive concrete “barrel” trucks for delivery to a customer’s work site whether it is a residential or a commercial job. The asphalt and aggregate drivers (hereinafter referred to as the “aggregate drivers”)⁴ perform the same function⁵ with different types of dump trucks suited to the particular job, including trucks with a trailer. Typically, a driver has a home facility where the truck they drive is based. This is true for both aggregate and concrete drivers.

Drivers are given dispatches the day before via a phone dispatch system or if no dispatch is available they are on call until approximately 10:00 a.m. the next morning. The dispatch will normally give the driver his first run of the day and it can be based out of the home facility or if there is a large project or other need the driver can be instructed to take the vehicle to another facility to make deliveries. This switching of locations can occur daily depending on the business needs for that particular day. For instance, concrete drivers can start at Canby and during the course of a day make deliveries from Orchards or Foster or any permutation of those three facilities.

Aggregate is used for production of concrete and sometimes for site preparation before laying concrete or asphalt. Aggregate is also sold to private customers for their own purposes. While one side of the business is partially dependent on the other, the aggregate and concrete drivers have limited personal contact with each other. They load their product at separate locations⁶ and generally are not at a given work site at the same time.

All supervision is centralized through the dispatchers and supervisors located at the Orchards corporate offices. However, there is separate supervision for both the aggregate and concrete drivers for the most part. There is a trucking department, which reports to the vice president of operations. The trucking department has a concrete side and an aggregate side. A manager heads the aggregate side with one supervisor reporting to the manager. The concrete side also has a manager with two supervisors reporting to the manager. The sweeper truck driver and water truck drivers generally report to the aggregate manager. There is some interrelationship of supervisors in that whoever is available can handle inquiries, problems or any other issue that comes up for both concrete and aggregate drivers. However, as a general rule, each type of driver deals with the supervisor handling that specific area. There are six dispatchers, also broken down into aggregate and concrete departments. Four of the

³ The record reveals that one location actually consisted of two physically separate facilities and, thus, counted as two in reaching the total of seven facilities.

⁴ At the hearing in this matter, the parties stipulated that the asphalt drivers should be lumped in with the aggregate drivers. In support of this stipulation, the record discloses that the asphalt and aggregate drivers share common supervision and have a high degree of interchange between aggregate and asphalt work.

⁵ Approximately 41% of the aggregate production is used internally, primarily for concrete production and some for internal capital improvement projects.

⁶ Even where concrete and aggregate are produced at the same facility, the loading areas for concrete and aggregate are separate.

dispatchers are cross-trained⁷ to dispatch either concrete or aggregate drivers and do so on occasion, although the record does not show exactly how often this occurs. All supervisors and dispatchers are located at the Orchards facility and the supervisors travel to the various locations during the course of a given day.

Drivers are also cross-trained. There are 60 aggregate drivers and 16 of those are cross-trained to operate concrete trucks. There are 39 concrete drivers and 17 of those are cross-trained to operate aggregate trucks. The cross training is voluntary, although the Employer states its goal is to, within a year, have essentially its entire work force cross-trained. The cross training takes a couple of weeks and is essentially on-the-job training with the trainee riding with another driver/trainer for a couple of weeks. The purpose of the cross training is to give the Employer flexibility in assigning work so short-term additional employees are not required when there is an overload in one department or a shortage of work in another department. The Employer utilizes the cross-trained employees to fill in these gaps. The record shows this occurs on a daily basis but does not provide detailed statistics of how often this occurs in absolute terms or relative to overall dispatches. An individual driver can spend part of his days driving concrete trucks and part driving aggregate trucks, but again the record does not show with specificity how often this occurs, only that it does happen. The record indicates that approximately 2-3 aggregate drivers may be driving concrete trucks or vice versa on any given day.

There have been limited permanent transfers between positions. The record indicates that, over the past 12 months, approximately three to five aggregate drivers permanently switched to concrete vehicles and a similar number of concrete drivers switched to aggregate. One aggregate driver transferred to a water truck position. These were voluntary transfers and it appears that the Employer did not require any driver to involuntarily transfer from one position to another.

Concrete drivers call one telephone number while aggregate drivers call another for their respective dispatches. When interchange occurs, drivers are given a message, by their normal dispatch, to call the other number. Concrete drivers receive an initial dispatch from their home locations⁸ and then subsequent runs from their dispatcher. This same process applies to aggregate drivers. If a driver does not get a dispatch the day before, they are on call until 10:00 a.m. the next morning. Drivers generally call⁹ in at about 10:00 a.m. to see if they have a dispatch or are released for the day.

The sweeper driver and water truck drivers (four at peak times) generally do not report through dispatch but rather to supervisors. The sweeper vehicle has a general pre-planned schedule, which can be varied as needed. Similarly, the water truck drivers have a schedule, which varies depending on the projects and the time of the year. (Less watering for dust suppression is needed in the winter.) Water truck drivers also drive aggregate trucks as needed and vice-versa. There are four water trucks with two fill-in drivers and one sweeper driver. The current sweeper driver was a voluntary transfer from an aggregate position.

All drivers are required to have essentially the same driving skills but the aggregate drivers are required to have a commercial drivers license permitting them to drive a vehicle with a trailer. The concrete drivers must also have a commercial drivers license but not with the trailer endorsement.

⁷ There is different computer software for each department although the Employer says it is working on merging the two systems.

⁸ As noted above, business needs may cause a concrete driver to take the truck from the home location to another facility for the first dispatch of the day.

⁹ They call the concrete or aggregate dispatchers depending on their position.

Concrete drivers have somewhat more contact with customers because approximately 41% of aggregate driving is internal to the Employer's operations while concrete drivers spend more time in a delivery due to the nature in which concrete is delivered to the Employer's customers. Specifically, concrete is not just dumped at a site as is aggregate. Rather, it is unloaded slowly at the location where it is needed. This requires more interaction with the customer as to the location and flow of the delivered concrete. Concrete drivers are expected to be able to evaluate the moisture content of the concrete (the slump) and adjust accordingly. The record indicates this ability to measure the slump is developed over time in delivering the concrete. The concrete truck is a little more difficult to drive because of the moving load in the barrel but all drivers must have competent driving skills. Both sets of drivers inspect their trucks, receive loads of their respective materials at one of the facilities, and, then, deliver the material. Aggregate drivers tend to have more runs per day since the delivery process is shorter. They generally dump the load and leave or if the load is internal it can be a short run within a given facility. Concrete work tends to be more seasonal with fewer driver hours in the winter months but the record does not show any specific payroll records in this regard, other than a concrete driver who testified his hours were greatly reduced in the winter months.¹⁰

All drivers receive basically the same wage scale, and all employees (including drivers) enjoy the same benefit levels. The Orchards office handles all personnel and human resource matters. All employees, including drivers, are subject to the same employee manual and rules. New drivers attend the same orientation classes and there are common (aggregate and concrete) safety and training meetings at least twice a year, although concrete and aggregate drivers regularly have their own separate department meetings approximately twice a month. All drivers share the same facilities; break rooms¹¹ and parking areas although the concrete and aggregate vehicles tend to be grouped together at individual sites. All drivers wear the same company uniform with a slight variation in the hat style for concrete, which apparently is not uniformly followed.

Analysis

In the instant case the Petitioner is seeking only the concrete drivers and it is my function to determine if this grouping is an appropriate unit. A petitioner need not seek the most appropriate unit, but only *an* appropriate unit, based on the community of interest of the employees involved. *Motts Shop Rite of Springfield, Inc. and Mitts Shop Rite of Cicopee, Inc.*, 182 NLRB 172, fn. 3 (1970). See also *Overnight Transportation Company*, 322 NLRB 723 (1996). The Act requires only that the unit be "appropriate" in order to insure employees "the fullest freedom in exercising the rights guaranteed by this Act." *Bartlett Collins Co.*, 334 NLRB No. 76 (2001). The major determinant in an appropriate unit finding is the community of duties and interests of the employees involved. *Swift & Co.* 129 NLRB 1391 (1961). Some factors to be considered are: The degree of functional integration, supervision, nature of employee skills and duties, interchangeability and general working conditions. This list is not intended to be exhaustive but is representative of the types of factors the Board looks at in making appropriate unit determinations.

Here, we have separate departments for the concrete drivers with separate lines of supervision and management and separate dispatching than that, which exists for the aggregate drivers. The record does show some minor overlap in supervision and dispatch

¹⁰ It would appear from the record that the trucking of asphalt and concrete share some similarities in that asphalt, like concrete, usually is not readily or quickly dumped at its delivery site. Aggregate material is readily dumped in a generally significantly quicker fashion. While I note this similarity, the record still reveals there exists some significant differences between the handling, trucking and delivery of asphalt, concrete and aggregate.

¹¹ Drivers do not tend to congregate in the break/lunch rooms except to do some paperwork.

depending on the situation but this appears to be limited to isolated troubleshooting by the supervisory staff available at the time. Thus, the record does not show a consistent involvement in concrete supervisory duties by the aggregate supervisors or vice versa.

Concrete drivers generally have a different work situs than the other drivers. While they both use the same facilities to park their trucks and obtain their respective loads, the concrete drivers are loaded with concrete at a plant at one of the three concrete producing facilities and aggregate drivers receive their loads in a different manner (i.e. front loaders, dumping from hoppers, etc.) at a different part of the same facility. They do not generally encounter each other in the course of a business day. There are occasions where an aggregate materials delivery is a precursor to the delivery of concrete but they are usually not at the same customer site at the same time. Significantly, another difference exists between aggregate and concrete drivers in that 41% of the aggregate work is delivering aggregate rock from the Employer's quarry and processors to a concrete plant while the concrete drivers typically deliver their loads to the Employer's customers. The concrete drivers also have separate regular meetings from the aggregate drivers.

The concrete and aggregate drivers must both be competent truck drivers with commercial licenses. The aggregate drivers must be certified to drive trailer vehicles. Each type of truck has its own handling characteristics although 2 weeks of on-the-job training is sufficient to teach a driver how to handle these characteristics. The characteristics of concrete trucks include having to deal with and to monitor shifting loads in the rotating barrel and the driver must be able to accommodate any problems that arise in this regard. For instance, the concrete drivers have to be able to measure the slump (basically moisture content) and add the correct amount of water to bring the mixture up to customer specifications.

Concrete work is somewhat seasonal as concrete demand is much lower in the rainy, cold months of winter. As a result concrete drivers appear to work less hours in the winter.

I note that all employees have the same benefit levels and utilize the same human resources department, which is centrally located at the Orchards facility. The pay level for aggregate and concrete drivers is essentially the same. To a degree, the concrete drivers are dependent on the production of aggregate, which is transported by the aggregate drivers and an essential ingredient in the production of concrete. There is also a certain degree of interchangeability between the concrete drivers and the aggregate drivers due the cross training of drivers. However, the record is not specific as to the extent and nature of the interchangeability. For instance, there is no record evidence showing the percentage of runs operated by cross-trained drivers or the number of cross-trained runs relative to the overall level of runs. See *Dayton Transport Corporation*, 270 NLRB 1114 (1984) where the Board found the specific details as to interchange a crucial factor in making a determination as to a single location vs. multi location unit.

On balance, I find that the petitioned for unit of concrete drivers is an appropriate unit. The separate supervision, separate duties and skills, seasonality of work and other working conditions are sufficient to support a unit of concrete drivers only. Although, there is some interchangeability, the record is not sufficient in this regard to make this a major factor. I have also taken into account the uniform benefits and personnel policies for all employees as well as the level of interdependence of all operations typically found in most business operations. Although this appears to be a close issue on the surface, the Board has traditionally found over-the-road drivers and local drivers to constitute separate appropriate units where they have separate interests. *Gluck Bros., Inc.*, 119 NLRB 1848 (1958); *Decoster Egg Farms*, 223 NLRB 884 (1976).

I find the case cited by the Employer, *Carpenter Trucking*, 266 NLRB 907 (1983) to be distinguishable from the instant situation. In *Carpenter Trucking*, the Petitioner was seeking a unit of dump truck drivers, excluding *inter alia*, tank truck drivers. Although it did not supply concrete products, as is the situation in the instant case, the Employer, in *Carpenter Trucking*, similarly was engaged in the business of supplying aggregate and asphalt products for construction purposes. The tank truck drivers worked overnight shifts to supply the Employer's asphalt plant with the raw material for making asphalt. There were no special skills needed to operate the dump versus the tank trucks, they all had one common supervisor (the owner) and common working conditions along with some interchange. Here we have separate supervision and management, different skills, different customer interaction, seasonality of work, and separate departments and dispatching. Thus, *Carpenter Trucking* is not applicable to the facts in this case.

Based on all the above, I conclude that the petitioned-for unit of concrete drivers does have a sufficiently distinct community of interest to warrant separate representation. Accordingly, I shall direct an election in that unit described as follows:

All concrete (barrel) truck drivers employed by the Employer; excluding aggregate and asphalt truck drivers, sweeper truck drivers and water truck drivers and all other employees, supervisors and guards as defined in the Act.

There are approximately 39 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(s) 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(s) 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. 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 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 General Teamsters Local Union No. 162, affiliated with International Brotherhood of Teamsters, AFL-CIO.

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 SubRegion 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 Ave., Suite 1910, Portland, OR 97204-3170, on or before November 27, 2002. 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 December 4, 2002.

DATED in Seattle, Washington, this 20th day of November 2002.

Catherine M. Roth, Acting Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174

420-4000-4000
420-4000-5000
420-4000-5075
420-4000-5625
440-1760-6240
440-3375-3750