

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

WILLCAN, INC. d/b/a BASIC READY MIX¹

Employer

and

Case 10-RC-15388

TEAMSTERS LOCAL UNION #515, affiliated with
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

Willcan, Inc., doing business as Basic Ready Mix, is a Georgia corporation with its principal offices located in Calhoun, Georgia. The Petitioner, Teamsters Local Union #515, affiliated with The International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit consisting of all drivers, loader-operators and mechanics employed by the Employer at its Chickamauga, Georgia facility (herein "the Walker County facility"), located at 221 Industrial Drive, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act. A hearing officer of the Board held a hearing and the parties made oral argument and the Employer filed a brief, which was duly considered.

There are two issues herein. First, the Employer objects to the scope of the unit sought and argues that employees at three other facilities should also be included. The three other

¹ The name of the Employer appears as amended at the hearing.

facilities are in Calhoun, Rome, and Dalton, Georgia. Second, the Employer, contrary to the Petitioner, contends that its “lead” drivers are Section 2(11) supervisors and therefore should be excluded from any unit found appropriate.

I have considered the evidence and the arguments presented by the parties on each of the issues. As discussed below, I have concluded that the functional integration of the Employer’s ready-mix concrete operation is so substantial as to negate the separate identity of the petitioned-for single facility unit. I shall therefore direct an election in the multi-location unit urged by the Employer. I have also determined that the Employer has not demonstrated that the lead drivers are Section 2(11) supervisors and I shall therefore include them in the unit.

To provide a context for my discussion of these issues, I will first provide an overview of the Employer’s operations. I will then present in detail the facts and reasoning that support each of my conclusions on the issues.

I. OVERVIEW OF THE EMPLOYER’S OPERATIONS

The Employer is engaged in the production, sale and delivery of ready-mix concrete from its four batchhouse facilities located in Calhoun (where the central offices are also located), Rome, Dalton, and Walker County, Georgia.² The Employer’s ready-mix concrete product is a combination of cement, sand, and stone which is mixed with water while en route in the delivery trucks to a particular customer job site. The concrete is typically used for foundations, floor slabs, sidewalks, curbs and gutters, and a variety of other construction purposes. Ready-mix concrete is a perishable product which cannot be en route in transport for generally more than an hour, without risk of spoiling. Accordingly, inasmuch as the mixing trucks typically travel no faster than 25 miles per hour, each of the Employer’s four batchhouse facilities have been

² The addresses of the four facilities are as follows: (1) in Calhoun, 712 North Wall Street; (2) in Rome, 33 Riverside Industrial Drive; (3) in Dalton, 515 Brott Drive; and (4) in Walker County, 221 Industrial Drive (Chickamauga).

located at strategic distances from the others in order to efficiently service customers. The Walker County facility (the single-facility unit urged by the Petitioner herein) is located within 25 miles of the Dalton facility and within 50 miles of the Employer's central offices and batchhouse facility in Calhoun and within 50 miles of the Rome facility. The Dalton and Rome facilities are each located within 25 miles of the Employer's central offices and batchhouse facility in Calhoun (and within 50 miles of each other). The company maintains a fleet of approximately 53 ready mix trucks in total at all four locations.

The Employer employs in total at all four batchhouse locations the following unit employees: approximately 39 drivers, 3 loader-operators and approximately 6 or 7 mechanics. At Walker County, the single location at which the Petitioner seeks an election, the Employer employs 9 drivers, 1 loader-operator, and 2 mechanics (including a mechanic's helper³). In Calhoun, there are approximately 9 drivers, 2 mechanics and no loader-operators. In Rome, the Employer employs approximately 10 drivers, 1 loader-operator, and 2 mechanics. There are approximately 11 drivers, 1 loader-operator, and apparently no mechanics employed in Dalton.⁴

The Employer's President, Anthony M. Cantrell (the Employer's sole witness at the hearing) oversees all aspects of the Employer's operations, including all sales and production functions and regulatory and legal matters, and is based at the main business offices in Calhoun.⁵ At the main business offices, the Employer maintains all concrete mix designs, customer base records, and files. All four batchhouse facilities access the Calhoun computer server to retrieve computer-generated formulas for all mix design, as well as for customer billing and credit

³ The parties agree that the mechanic's helper should be included in any unit found appropriate herein.

⁴ The assistant fleet manager is evidently based in Dalton; the record does not reflect the nature of his work at Dalton. Also based in Dalton is a plant maintenance person (Juan Morales) who works at the different facilities on a roving basis and sometimes works with the mechanics at the locations. Inasmuch as the record does not establish whether the plant maintenance person shares a community of interest with other unit employees, I shall permit him to vote, subject to challenge.

⁵ The Calhoun batching house facility is evidently separate from the main business offices.

information. After the mix is batched it is computer processed back to Calhoun for billing. Also housed at the Calhoun business office are the company's operations and records related to billing, invoicing, inventory, human resources⁶, payroll, insurance, and customer credit information.

Other management executives work out of the Calhoun business offices, including Vice President (and part owner), Tom Wagaspak; Controller Tim Helbing; and General Manager Jim Little. Wagaspak is responsible on a daily basis for ensuring that the proper customer mix formulas are maintained. Helbing is responsible for payroll and other financial functions. Little is responsible for all commercial sales. Also based in Calhoun is the Fleet Manager, Tony Pickens, who oversees all matters related to the truck fleet, purchase and maintenance of equipment, and the physical plants.⁷

The two top officials at each of the four batchhouses are the Sales Manager and the Plant Manager. The four sales managers report to General Manager Little (located in Calhoun). They are responsible for tracking and pricing customer orders at their respective plants. The four plant managers come next in the hierarchy and are responsible for production functions and oversee all production personnel, including drivers. Below the Plant Managers are lead drivers whom the Employer contends are Section 2(11) supervisors, contrary to the Petitioner. There are a total of 6 lead drivers, including 2 lead drivers at Walker County, the single facility unit in which the Union seeks an election. Two of the remaining 4 lead drivers are in the Rome facility, and 1 lead driver is in each of the other facilities, Dalton and Calhoun.⁸

⁶ Apparently, the Employer's human resources department consists of the human resources clerk, Pamela Flowers, who works at the main offices in Calhoun. She performs payroll, employee benefits, and related functions, and also checks customer credit applications.

⁷ Supplies and materials are dispatched to the batchhouses by Cheryl Mosteller, who is based at Dalton.

⁸ The "outside" and "inside" lead drivers at Walker County are respectively Mark Tidwell and Stacy Horne. Tidwell and Horne testified at the hearing about their duties and responsibilities. The lead driver at Dalton is Lamar North.

With the foregoing overview of the Employer's operations as backdrop, I now turn to the issue of unit scope.

1. THE SCOPE OF THE UNIT

As is noted above, the Petitioner seeks an election among unit employees in a single location, the Walker County facility. The Employer objects to the single-facility unit, contending that employees at the three other batchhouse facilities in Calhoun, Dalton, and Rome, must be included in the unit. At the outset, it should be noted that there is nothing in the statute which requires that the unit for bargaining sought by the Petitioner be the only appropriate unit, or the ultimate unit, or the most appropriate unit. The Act requires only that the unit be an appropriate one. Taylor Bros., Inc., 230 NLRB 861, 869 (1977). Thus, the question to be decided herein is whether the single facility unit sought by the Petitioner is *an* appropriate unit under the Act. It is also well settled that a single location unit is presumptively appropriate. See Jackson's Liquors, 208 NLRB 807, 808 (1974). This presumption may be rebutted by a showing that the day-to-day interests of the employees at the sought location have merged with those of employees at the other locations, or that the facility in question is so functionally integrated with the other facilities, as to have lost its separate identity. Courier Dispatch Group, Inc., 311 NLRB 728 (1993); J&L Plate, 310 NLRB 429 (1993); Beckett Aviation Corp., 254 NLRB 88, 89 (1981).

The burden of rebutting the presumption rests here on the Employer, the party requesting the multi-facility unit. In determining whether the presumption has been rebutted, the Board has traditionally considered various factors, such as centralized control of daily operations and labor relations. In addition, the Board also analyzes similarity of skills, functions, and working

The "outside" and "inside" lead drivers in Rome are respectively Tommy Timms and Charles Williams. The lead driver at Calhoun is Jerry Thacker.

conditions; degree of employee interchange; geographic separation; and bargaining history, if any.⁹ *For presumption rebutted*, see Waste Management of Washington, Inc., 331 NLRB 309 (2000); Novato Disposal Services, Inc., 328 NLRB 820 (1999); R&D Trucking, Inc., 327 NLRB 531 (1999); Coca-Cola Bottling Co. of Buffalo, Inc., 325 NLRB 312 (1998); Dayton Transport Corp., 270 NLRB 1114 (1984); Tungsten Contact Mfg. Co., Inc., 189 NLRB 22 (1971). *For presumption not rebutted*, see New Britain Transportation Co., 330 NLRB 397 (1999); Rental Uniform Service, Inc., 330 NLRB 334 (1999); D&L Transportation, Inc., 324 NLRB 160 (1997); Dattco, Inc., 324 NLRB 323 (1997); Courier Dispatch, 311 NLRB at 728, cited *supra*; Esco Corp., 298 NLRB 837 (1990); and Beckett, 254 NLRB at 89, cited *supra*.

I now turn to the evidence offered by the Employer to rebut the presumed appropriateness of the single facility unit at Walker County. It is clear from the testimony of the Employer's President, Anthony M. Cantrell, that he is a "hands-on" executive who runs a highly centralized operation. He personally determines the purchase of all materials (i.e., the specific materials, the suppliers, and the nature of delivery to Employer) and reviews and approves all mix designs for cost, price, and quality. He also approves all customers and credit applications and all software for customer base, mix designs, accounting, and billing. He also reviews daily production reports prepared by the plant managers, "to see how we're doing as far as" man hours, overtime, manpower and materials costs as percentage of sales are concerned. He also determines how many trucks are domiciled at each plant and has final say on all employee wages, including overtime policy, and benefits.

President Cantrell testified that he holds regular weekly meetings every Monday morning, attended by the Vice President, the General Manager, and the sales managers from

⁹ There is no collective bargaining history at the single facility-unit or in the broader unit urged by the Employer.

each of the various plants.¹⁰ The object of these meetings is to forecast, on a weekly, biweekly, and monthly basis, the operations needs at each of the locations. For example, if the President is informed of employee turnover, he will make the decision at these meetings whether to hire additional personnel. Further, if necessary to meet customer needs, he will make the decision to temporarily transfer drivers from plant to plant, in order to more efficiently deliver product.¹¹

Only higher management officials at the Calhoun facility have daily computer access in “real” time to the status of all jobs at all facilities (i.e., how many trucks loaded or unloaded, how many returning to a particular plant).¹² President Cantrell testified that based on his regular review of this “real” time data, he frequently overrides the decisions of plant managers and sales managers in servicing customer needs. He testified that he regularly calls each of the facilities, particularly if the computer shows that a job is not going well, that it is “undertrucked,” or “overtrucked.” In these situations he discusses with the plant manager how to handle the job in a more efficient fashion, perhaps by temporarily assigning drivers from other plants.

The record shows that there is no difference in functions, wages and other benefits among job classifications at each of the four locations. The approximately 39 drivers (including 9 at Walker County, the single-location unit sought by the Petitioner) are responsible for delivering the batched ready-mix from the Employer’s facility to customer locations. The duties of the approximately 3 loader-operators (including 1 at Walker County) are essentially loading and yardman duties. They are responsible for loading in the proper bins the raw materials used in the batching process, keeping the yard clean, and assisting in loading trucks, when necessary. The

¹⁰ The record does not disclose whether the plant managers attend these regular weekly meetings.

¹¹ The Employer also operates a dump truck operation, and will occasionally “pull” dump truck drivers for short periods of time to fill in at the batchhouses. Apparently, on occasion, the Employer’s ready-mix drivers will fill in for dump truck drivers. The record does not reveal how frequently this occurs. The record also does not disclose how many dump truck drivers or other employees are employed in the dump truck operation, or where these employees are based. Neither the Employer nor the Petitioner contend that the dump truck operation employees should be included in the unit.

¹² None of the facilities has computer access to the “real” time status of jobs at other facilities.

drivers' wage scale is set by the President and applies to all drivers at each of the plants; the wage scale is based on years of service. The loaders are also paid based on the same wage scale at all plants.

The Employer's approximately 6 or 7 mechanics (including 2 at Walker County) are responsible for the maintenance and repair of equipment (trucks, loaders and pumps) at each location. The mechanics are also paid based on the same wage scale. The scale is determined by Fleet Manager Tony Pickens, based on experience. All benefits for employees are set centrally by the President and are identical for all drivers, loaders and mechanics. Employee benefits include health insurance, retirement, holiday pay, and vacation pay. Orientation for all new employees is conducted at Calhoun; the Employer's human resources clerk distributes the same employee handbook to all new hires during orientation.

The unit employees are subject to different supervision on a daily basis. The Employer's 6 or 7 mechanics, for example, are supervised by Fleet Manager Tony Pickens (based at Calhoun), regardless of where they are based among the four facilities. The mechanics report to Pickens (apparently on a daily basis) by phone and radio, and are required to call him to "open" work orders. Mechanics are regularly assigned to a shop at a particular facility, though Pickens has discretion to assign them to other plants. Apparently, mechanics are assigned to other plants as often as once per month, because a particular mechanic's expertise is needed at a facility or in the event of accidents. A mechanic's work hours are apparently set by the plant manager of the plant to which he is regularly assigned.

The drivers and loader-operators are supervised by the individual plant managers. The plant managers are responsible for batching, dispatching, and work schedules at their individual plants. The Employer's President hires the drivers, though it appears that initial interviews and

screening are conducted by the plant managers. The employee handbook provides that a plant manager's recommendation may be requested or considered in the case of promotions. President Cantrell makes the ultimate decision regarding lay-offs, but the plant managers have some input into who is laid off at their individual plants.

The Employer's employee handbook provides for an "open door" policy, with the plant manager as the "first step" in the event of employee questions or problems. Employees are required to call in to the plant managers in the event of safety hazards, accidents or other emergencies, damage to concrete en route, or in the event of absences, or latenesses. The handbook also provides for an EAP program for employees with drug or alcohol problems, encouraging initial employee contact with the plant managers. The record does not disclose what, if any authority, plant managers have with regard to discipline, including warnings or discharge.

According to President Cantrell, there is frequent interchange among drivers at all four facilities. This occurs on almost a daily basis, particularly during the summer months. Though drivers are typically "domiciled" at a particular plant, they are often called upon to assist in deliveries originating from other plants. Such temporary assignments are often made, according to the Employer President, on a "spontaneous, as needed basis" to efficiently service customers. These temporary transfers are arranged by higher management at Calhoun, though plant managers can initiate the process by contacting the President or Vice President. Drivers are usually informed the night before that they will be working at another plant, though sometimes they are not told until they arrive at their home plants. Drivers who are temporarily assigned to other plants are subject to the supervision of the plant manager at the transferee plant. The

record does not reflect the degree of contact the drivers have with other employees while at the transferee plant.

At the hearing, the Employer offered documentary evidence purporting to show “representative” temporary transfers during the month or so before the filing of the petition herein.¹³ That evidence reflects that on at least four occasions, 3 employees based at the Walker County facility performed work which originated at other facilities, such as Dalton and Rome. Evidence pertaining to drivers based at Dalton shows that on at least thirty occasions, more than a half dozen employees based at Dalton performed work which originated at other facilities, including Walker County, Rome and Calhoun. The evidence shows that on a daily basis, these temporary assignments ranged from a few hours to a full day. One of the drivers who testified on behalf of Petitioner at the hearing indicated that he spent five percent of his work time making deliveries for other plants during the two or three months before the hearing. Another driver witness for the Petitioner testified that during the last three months he was “batched” from his “domicile” facility (as opposed to from other facilities) about 85% of the time.

The evidence shows significantly less frequency in the case of permanent transfers. In the past year, there have been two permanent transfers among unit employees: a driver at the Walker County facility transferred to Dalton, and an employee based at the Rome plant transferred to Calhoun. Apparently, each of these employees requested the permanent transfer. President Cantrell testified that permanent transfers are usually made at the request of employees, due to personal convenience or preference.

¹³ Employer Exhibit 3 consists of time cards filled out by employees based at Walker County, with codes which designated work charged to other facilities. Employer Exhibit 4 consists of time cards evidently filled out by employees based at Dalton, with codes which designated work charged to other facilities, including Walker County; Calhoun; and Rome.

Based on the foregoing and weighing all of the factors considered by the Board, I find that the Employer has rebutted the presumptive appropriateness of the single facility unit sought by the Petitioner. In reaching this conclusion, I note that the Employer's ready-mix operation is highly integrated: the entire operation is run out of the Calhoun facility, based on centralized computer technology under the watchful eye and hands-on control of its chief executive, President Cantrell. Further, the wages and benefits of all unit employees are set centrally and are identical. Moreover, the functions of each classification of unit employees are interchangeable, with drivers, mechanics, trucks and other equipment switched from location to location on an as-needed basis.

I am also persuaded that the common supervision of employees and apparent lack of local supervisory autonomy supports the Employer's contention that the single facility presumption has been rebutted. The record establishes that President Cantrell and higher management exercise tight control over labor relations, with final authority over hires, layoffs, wages, benefits and other terms of employment, such as temporary assignments at other facilities. See R&D Trucking; and Novato Disposal, cited supra. Indeed, there appears to be no local supervision for over 10% of the unit, with the 6 or 7 mechanics of about 49 unit employees (including 2 mechanics of 10 unit employees at Walker County) reporting directly on a daily basis to the Employer's Fleet Manager in Calhoun. See Tungsten Contact, cited supra. Although the plant managers are responsible for the batching, dispatching and scheduling of drivers and other employees at each of the plants, this appears to be routine day-to-day authority over "shop needs," and thus lacks substantial authority. See Dayton Transport Corp., cited supra. The record in this case simply does not establish that plant managers have any duties or responsibilities beyond routine supervision of daily operation of the plants. Tungsten, supra.

Another factor militating against a single location unit is the evidence of interchange among unit employees at all four locations. As is noted above, the Employer's President testified that temporary transfers among drivers could occur as frequently as daily, particularly during the summer months. In concluding there is significant interchange, I do not rely solely on President Cantrell's testimony, or on the Employer's "representative" documentary evidence on this point. See Waste Management; and New Britain Transportation, *supra*. I also note that the Employer's testimony was corroborated by two employee witnesses for the Petitioner, who estimated that they had recently spent 5% to 15% of their time making deliveries for other plants. I also note the unrefuted testimony that mechanics are rotated among other facilities.

Accordingly, notwithstanding the geographical separation among the four facilities, I find that the Employer presented sufficient evidence to rebut the presumption that a single location unit is appropriate. In view of the functional integration, high degree of centralized control of labor relations, lack of local supervisory autonomy, common terms and conditions of employment and significant temporary interchange among employees, I find that the Employer has demonstrated that the functional integration of its operations is so substantial as to negate the separate identity of the single-facility unit sought by the Petitioner. I shall, therefore, direct an election in the broader 4-facility unit urged by the Employer.

2. THE LEAD DRIVERS

As is noted above, the Employer contends, contrary to the Petitioner, that its six lead drivers are statutory supervisors and therefore should be excluded from the unit. Based on the record and applicable law, I find the Employer has not proven that the lead drivers are Section 2(11) supervisors and I shall, therefore, include them in the unit.

It is well established that the party who asserts that an individual is a Section 2(11) supervisor bears the burden of demonstrating the actual exercise of supervisory authority by the individual in question. NLRB v. Kentucky River Community Care, 532 US 706 (2001); Bennett Industries, 313 NLRB 1363 (1994). Only if the exercise of Section 2(11) authority is not merely routine, clerical, perfunctory, or sporadic in nature, but requires the use of independent judgment, is a finding of supervisory status appropriate. Byers Engineering Corp., 324 NLRB 740, 741 (1997).

As is described above, the Employer claims six lead drivers are supervisors: two lead drivers at Walker County (Mark Tidwell, the “outside” lead, and Stacy Horne, the “inside” lead); two lead drivers at the Rome facility (Tommy Timms, the “outside” lead, and Charles Williams, the “inside” lead); and one lead driver each at the Calhoun facility (Jerry Thacker) and at the Dalton facility (Lamar North). There is scant evidence about the job functions of the leads, except for the testimony of the Employer President, and the testimony of the two lead drivers (Tidwell and Horne) at Walker County.

Based on the above testimony, the Employer asserts the lead drivers are supervisors for four reasons. First, the “outside” leads take employment candidates out for “check rides” to determine if they can drive, and therefore have authority to make effective hiring recommendations. Second, the lead drivers train new drivers. Third, the “inside” lead drivers substitute for absent plant managers. Last, the lead drivers are paid \$.50 to \$1.00 more per hour than regular drivers. I deal with each of these points below.

It is well settled that secondary indicia are not dispositive in the absence of evidence indicating the existence of one of the primary indicia of supervisory status set out in the statute. North Jersey Newspapers Co., 322 NLRB 394 (1996). The existence of a pay differential has

been held to be such a “secondary” indicator. McClatchy Newspapers, Inc., 307 NLRB 773 (1992). Accordingly, the fact that the lead drivers are paid \$.50 to \$1.00 more per hour than the other drivers, standing alone, does not establish that the lead drivers are supervisors under the Act.

Next, Employer President Cantrell testified that the “inside” leads act as plant manager when the plant manager is absent due to vacation, sickness, or for other reasons. However, the record does not reflect which of the six leads have actually substituted, or how frequently and regularly this occurs. The only evidence on this point was the testimony of Horne who indicated he had recently substituted for the plant manager, and this was the “first time . . . in a long time,” and that perhaps he “dispatched” 10% of his time. It is well established that an employee who substitutes for an absent supervisor is not deemed to be a supervisor unless his exercise of supervisory authority is both regular and substantial. Benchmark Mechanical Contractors, 327 NLRB 829 (1999); Hexacomb Corp., 313 NLRB 983 (1994). In view of the scant evidence on this point, I find that the Employer has not demonstrated supervisory status based on substitution for plant managers.¹⁴

I turn now to the evidence of driver-training and of “check rides” of employee applicants. Employer President Cantrell testified that the duties of the “outside” lead drivers vary from plant to plant, but that the main duty was to be a “driver-trainer.” He also testified that the lead drivers take employee applicants out on “check rides” or “test drives” to determine driving ability. However, the record does not establish which of the leads have actually trained new drivers, and how frequently this occurs. Such evidence is also lacking with respect to “check rides” of employee applicants. There is evidence that other experienced non-lead drivers have trained new

¹⁴ It is also not clear what the leads do when they substitute for plant managers, other than dispatch trucks to deliveries from pre-arranged schedules. Further, Horne testified he was told by the plant manager that the “inside” lead job was not a “boss” position.

drivers. Given the state of the record, it appears that the leads' duties in this regard result merely from their superior knowledge and experience. This evidence is thus insufficient to establish their supervisory authority. Byers Engineering Corp., supra.

Accordingly, based on the record and applicable law, I find that the Employer has not established that the lead drivers possess or exercise supervisory authority within the meaning of Section 2(11). I shall, therefore, include them in the unit.

II. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

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 in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer employed at the Employer's Walker County facility located in Chickamauga, Georgia.
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 drivers, including lead drivers, loader-operators, mechanics and mechanics' helpers employed by the Employer in its Basic Ready Mix operations at its facilities located in Calhoun, Chickamauga (Walker County), Rome and Dalton, Georgia, excluding office

clerical employees, professional employees, guards and supervisors as defined by the Act.

III. DIRECTION OF ELECTION¹⁵

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local Union #515, affiliated with The International Brotherhood of Teamsters. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before 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. Unit employees in the military Services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who

¹⁵ Inasmuch as the Petitioner has not indicated whether it is willing to proceed to an election in the broader unit found appropriate herein, I hereby grant the Petitioner until August 20, 2003 to so indicate by written notice to the undersigned. Further, this Direction of Election is conditioned upon the Petitioner providing an adequate showing of interest in the enlarged unit by August 20, 2003. If the Petitioner does not desire to participate in an election in the unit found appropriate herein, I shall permit it to withdraw its petition without prejudice upon written notice to the undersigned on or before August 15, 2003.

have been discharged for cause since the strike began; and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

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 seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before August 13, 2003. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are

filed. The list may be submitted by facsimile transmission at (404) 331-2858. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed.

Section 103.20(c) 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.

IV. 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, NW, Washington, DC 20570-0001. This request

must be received by the Board in Washington by 5:00 P.M., (EDT) on August 20, 2003. The request may **not** be filed by facsimile.

Dated at Atlanta, Georgia, on this 6th day of August, 2003.

/s/ Martin M. Arlook

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