

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

QUAD COUNTY READY MIX CORP., AN ILLINOIS
CORPORATION, d/b/a QUAD COUNTY READY MIX OF
SWANSEA, ILLINOIS

Employer

and

Case 14-RC-12520

TEAMSTERS LOCAL UNION NO. 50, PETROLEUM
AND ALLIED TRADES DIVISION

Petitioner¹

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer is engaged in the production, sale, and delivery of ready mix concrete to the construction sites of contractors and homebuilders. In addition to the Swansea, Illinois facility involved here, the Employer operates nine other ready mix facilities in Illinois. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a single-facility unit of all drivers, yardmen, and helpers² employed at the Employer's Swansea facility. A hearing officer of the Board held a hearing and the parties have filed briefs.

As evidenced at hearing and on briefs, the parties disagree on whether the single-facility unit sought by the Petitioner is appropriate. The Employer contends that the single-facility unit

¹ The Petitioner's name appears as amended at hearing.

² The Petitioner contends the unit description should include all drivers, yardmen, and helpers because that is the unit description set out in the collective-bargaining agreement covering the eight facilities already represented by the Petitioner. The Employer classifies all of the petitioned-for employees as drivers and does not classify any of its employees as yardmen or helpers. I have described the unit sought in accordance with the evidence adduced at hearing.

sought by the Petitioner is inappropriate and that the petitioned-for employees should vote whether to be included in the existing multi-facility unit currently represented by the Petitioner. I have considered the evidence and arguments presented by the parties on this issue. As discussed below, I have concluded that the single-facility unit sought by the Petitioner does not represent a sufficiently distinct group of employees and is not an appropriate unit. I further conclude that the petitioned-for employees share a community of interest with the currently represented employees to entitle them to vote whether to be included in the existing multi-facility unit represented by the Petitioner.

I. OVERVIEW OF OPERATIONS

The Employer operates 10 ready mix concrete facilities in southwestern Illinois. The facilities are located in the following cities and counties: Mt. Vernon in Jefferson County; Salem and Centralia in Marion County; Breese, Carlyle, and New Baden in Clinton County; Okawville and Nashville in Washington County; Swansea in St. Clair County; and Troy in Madison County.³ The Employer's home office is located at the Okawville facility. All of the Employer's facilities are similarly engaged in producing and delivering concrete to commercial and residential contractors. The facilities are strategically located approximately 20 to 40 miles apart so that the drivers can deliver and unload concrete within an hour of loading, which includes about 30 minutes drive time, and help other facilities deliver concrete as needed.

The Employer is managed on a day-to-day basis by its owners, President Herbert Hustedde and Vice President and Office Manager Carol Hustedde, who are husband and wife. President Hustedde's family has operated the business for approximately 52 years. Both of the owners work out of the Okawville facility, and, in addition, the president visits each facility on a daily basis and oversees the operations. Each facility employs drivers and a dispatcher, who is

³ Employees at all of the facilities, except for Swansea and Troy, are currently represented by the Petitioner. The Petitioner is not seeking to represent any of the employees at the Troy facility. The record does not in any way distinguish the Troy employees or facility from the other employees and facilities.

also referred to as a plant manager.⁴ The Swansea facility has nine drivers. The record does not reflect the number of drivers employed at the Employer's other facilities.

The president and vice president/office manager, also referred to as the owners, are responsible for all interviewing, hiring, and disciplining of employees; and the vice president/officer manager approves vacation and other time off requests of employees at all of the facilities. The owners also jointly determine and administer the labor relations, including wages and benefits, for all of the facilities. All drivers employed at the Employer's facilities receive the same hourly wages and benefits and work under the same terms and conditions of employment outlined in the collective-bargaining agreement covering eight of the facilities, with the exception that employees who are not represented by the Union do not pay union dues. Employees address questions regarding their employment, wages, and benefits to the vice president/office manager. While a dispatcher/plant manager may report personnel problems such as tardiness to the owners, they do not recommend any discipline and the owners independently investigate any problems with the employee. Any verbal counseling, written warning, or other discipline is determined by the owners who issue the discipline to the employee. A dispatcher/plant manager similarly advise the owners of a customer complaint; and the owners, not the dispatcher/plant manager, would take any necessary action.

The dispatchers/plant managers at each facility have the same job responsibilities, which include taking customer orders, batching the various materials to produce the concrete, loading the ready mix trucks, and dispatching drivers to deliver the concrete in order of the drivers' seniority at their home facility. The dispatchers/plant managers also communicate with other facilities if it is necessary to obtain additional drivers and trucks from other facilities. The dispatchers/plant managers do not participate in the interviewing, hiring, or disciplining of employees. The dispatchers/plant managers may report an employee or other work problems

⁴ The parties did not stipulate as to the 2(11) status of the dispatchers/plant managers, nor did either party seek to have the dispatchers/plant managers included or excluded from the appropriate unit.

to the owners, but they do not have the authority to resolve any problems that arise. If a driver inadvertently fails to clock in, a dispatcher/plant manager can sign and initial a driver's time card verifying that the driver reported for work. While the Petitioner's witness testified that the dispatcher/plant manager at Swansea told him to clock out and not come back when he refused to take a load the morning of the hearing, that action was promptly revoked. The record otherwise fails to establish that the dispatchers/plant managers have hired or disciplined employees.

The Employer's drivers represented by the Petitioner and those employed at the Swansea facility receive the same wages and benefits including vacation, health and welfare, and a 401(k) retirement plan. These wages and benefits are set out in the collective-bargaining agreement between the Petitioner and the Employer, which covers all but the Employer's Swansea and Troy drivers. The record reflects that one driver submitted an employment application at the Employer's Breese facility but did not talk with anyone at that facility about employment, rather the Employer's owners contacted the driver by telephone and hired him to work at the Breese facility. The driver later transferred to the Swansea facility.

The drivers at each facility have the same job duties. Drivers report to their home facility each morning, record their time, get their assigned mixer truck, and then are dispatched to deliver concrete. Drivers at all the facilities drive the same make of mixer trucks. All other equipment is provided by the Employer and is the same at each facility. The Employer uses the same type of concrete materials at all of its facilities. The concrete materials are loaded into the mixer drum, which mixes into concrete as the drivers drive to a customer's location. At the delivery location, the drivers unload the concrete.

All of the Employer's dispatchers/plant managers and drivers are on the same radio network and, after completing a delivery, the driver radios back to the dispatcher/plant manager who dispatched the load and asks for his next assignment. Drivers may be dispatched to a facility other than his home facility if another facility needs assistance to complete an order. The

driver receives the customer order from the dispatcher/plant manager at the facility from which the driver makes the next delivery. A driver may be dispatched to another facility for several hours or days depending on the workload of the home facility and the facility that needs assistance. Thus, drivers are often told to report to another facility and the dispatcher/plant manager at that facility sends them out to deliver concrete. The record reflects that one Swansea driver recalled that during his 4½ years of employment, he has worked at other facilities once or twice a month, and in the last month prior to the hearing worked at the Troy facility on one occasion. The witness also testified that on several occasions drivers from other facilities were sent to the Swansea facility to deliver concrete due to the increased commercial and residential construction in the Swansea area. In addition to having contact with dispatchers/plant managers from other facilities, drivers also have contact with drivers from other facilities when at the facilities and when more than one driver delivers to the same site at approximately the same time. If their loads are not ready for dispatch, the drivers perform duties such as cutting rebar while waiting. Drivers are also responsible for cleaning the yard at their home facilities and perform maintenance on their mixer trucks, which they return to their home facility each evening.

The Petitioner has represented the drivers employed at the Employer's facilities, except for those drivers employed at the Swansea and Troy facilities, for several years. This representation has been embodied in successive collective-bargaining agreements, the most recent of which is effective from May 1, 2001 through April 30, 2005. Until November 1, 1996, the Petitioner represented the Employer's drivers employed at its Breese, Mt. Vernon, Nashville, and Okawville facilities. After the Employer added new facilities, the Employer and Petitioner entered into an Addendum to their 1995-1998 collective-bargaining agreement effective November 1, 1996, which extended the contract and recognition to drivers at the Employer's Centralia, Carlyle, Salem, and New Baden facilities. The Employer has not recognized the Petitioner in any single-facility unit. The Swansea facility has existed for 5 or 6 years. While the

Employer has indicated a willingness to include the Swansea drivers in the multi-facility unit, the Petitioner has declined because of higher wages and better benefits of represented employees in that area, referred to as the Belleville area standards. As noted, although not represented by the Petitioner, the Swansea drivers receive the contractual wages and benefits of employees at the Employer's represented facilities, referred to as the outlying area. Under the existing contract, drivers' seniority is plant-wide, so employees at the Swansea facility or other facilities do not have bumping or seniority rights with respect to other facilities. Although an employee's seniority would not transfer, a current employee would be considered for a job opening at another facility before a new applicant.

The CIU was certified as the collective-bargaining representative of employees at the Swansea facility.⁵ However, no collective-bargaining agreement was ever entered into covering the Swansea drivers. The CIU advised the Region that it did not wish to intervene in this proceeding.

II. SCOPE OF THE UNIT

A. OVERVIEW OF APPLICABLE LAW

A single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Trane*, 339 NLRB No. 106, slip op. at 2 (2003); *J & L Plate, Inc.*, 310 NLRB 429 (1993). The party opposing the single-facility unit has the heavy burden of rebutting the presumption. As the Petitioner seeks a presumptively appropriate unit, the Employer must introduce relevant, affirmative evidence to rebut that presumption. *Trane*, supra; *Waste Management Northwest*, 331 NLRB 309, 310 (2000). The Board "has never held or suggested that to rebut the presumption a party must proffer 'overwhelming evidence . . . illustrating the complete submersion of the interests of employees at the single store,' nor is it necessary to

show that ‘the separate interests’ of the employees sought have been obliterated.” *Trane*, supra, quoting *Petrie Stores Corp.*, 266 NLRB 75, 76 (1983). To determine whether the presumption has been rebutted, the Board considers such factors as (1) centralized control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of skills, functions, and working conditions; (3) degree of employee interchange; (4) geographic proximity; and (5) bargaining history, if any. *Trane*, supra; *R & D Trucking, Inc.*, 327 NLRB 531, 532 (1999); *J & L Plate*, supra. No one factor is determinative in analyzing whether the single-facility presumption has been overcome. *St. Luke’s Health System, Inc.*, 340 NLRB No. 139, slip op. at 3 (2003).

B. DISCUSSION OF RELEVANT FACTORS

1. Centralized Control Over Labor Relations

The record establishes clear central control over the daily operations and labor relations of the Employer’s 10 ready mix facilities. There autonomy of the dispatchers/plant managers at the facilities, including the Swansea facility, is severely circumscribed by the authority retained by the owners. The dispatchers/plant managers have no involvement in the interviewing, hiring, or disciplining of employees. Such decisions are made exclusively by the president and vice president/office manager, who are also the owners. The dispatchers/plant managers report any personnel or other problems to the owners, who investigate and retain all decision-making authority. Vacation and other leave requests are made to and approved by the vice president/office manager. The owners jointly oversee all the labor relations of the employees and determine wages and benefits. At each facility, the dispatchers/plant managers routinely dispatch the drivers based on the orders received from customers and drivers’ seniority. In addition, the president visits each facility daily and oversees the operations. There is no other

⁵ The Regional Director has taken administrative notice that Congress of Independent Union was certified as the collective-bargaining representative of all employees employed by the Employer at its Swansea, Illinois facility on August 6, 2001.

independent supervision over the day-to-day work of the individual facility employees or the ordinary daily operations.

In sum, the uncontroverted evidence clearly establishes that the owners, the president and vice president/office manager, make all of the decisions regarding personnel policies and procedures and otherwise control the labor relations applicable to employees at all the locations. They make all hiring, disciplinary, leave, vacation, and wage and benefit decisions for employees at all facilities.

2. Similarity of Skills, Functions, and Working Conditions

The record establishes that all drivers at all of the Employer's facilities have the same skills, job duties, and working conditions. All the drivers load, deliver, and unload concrete using the same type of mixer trucks and concrete materials. All drivers are also responsible for clean up at their facilities and the maintenance of their trucks. Drivers are frequently sent to facilities other than their home facility where they are assigned to engage in the same work duties of loading, delivering, and unloading of concrete.

All employees are subject to the same general terms and conditions of employment. Although the Swansea drivers are not represented by the Petitioner, they receive the same hourly wages, vacation, health and welfare, and 401(k) pension plan and other benefits set forth in the collective-bargaining agreement between the Petitioner and Employer covering eight of the Employer's facilities.

3. Employee Interchange

The record reflects the frequent and substantial interchange among the drivers at the various facilities including drivers from the Employer's other facilities to the Swansea facility due to the extensive new residential and commercial construction in St. Clair County where Swansea is located. The Petitioner's witness testified that he was hired to work at the Breese facility and transferred to the Swansea facility. He further testified that drivers from other facilities often pick up loads at Swansea, which facility has been particularly busy in the last

year. In addition, this witness has worked at other facilities once or twice a month throughout his 4½-year employment. When employees work out of another facility, they perform the exact same type of work they do at their home facility. The vice president/office manager testified that a driver will report to his home facility and be sent out on a delivery but later be sent to make deliveries for another facility. The frequency of interchange among the employees is based on the amount and size of concrete orders one facility receives and the availability of drivers from other facilities to assist.

Drivers generally spend all their time loading, driving, and unloading. Interaction among drivers, even those from the same facility, is dependent upon loading and unloading at the same time and place as other drivers regardless of the facility to which the driver is assigned. In addition, when drivers are sent to work at different facilities, they are dispatched by the dispatcher/manager at the other facility rather than their home facility on the radio network used by dispatchers/managers and drivers at all of the Employer's facilities.

4. Geographic Proximity

The facilities are in fairly close proximity. All of the Employer's facilities are strategically located within about 20 to 40 miles of other facilities, although certain facilities are located further apart.⁶ By locating facilities in close proximity to other facilities, the Employer is able to service its customers within an hour from the time the mixer truck is loaded and leaves the Employer's facility until the concrete is unloaded, which includes about 30 minutes drive time. The time limit is necessary to prevent the concrete from setting before it is unloaded.

⁶ On brief, the Petitioner admitted that the Swansea facility is located within about 20 to 43 miles of six of the Employer's facilities.

5. Collective Bargaining History

There is no history of collective bargaining between the Petitioner and the Employer with respect to the Swansea facility. However, the Petitioner has represented employees at four of the Employer's facilities for several years; and in 1996, the Employer extended recognition to the Petitioner as the representative of employees at an additional four facilities. Currently, the Petitioner represents a unit of employees at 8 of the Employer's 10 facilities. Employees at the remaining facilities, Swansea and Troy, are unrepresented. The Petitioner represents no facility of the Employer in a single-facility unit. The Swansea employees receive the wages and benefits set forth in the current collective-bargaining agreement and, but for the deduction of union dues, the Swansea employees enjoy the same terms and conditions of employment as the Employer's other represented employees.

C. ANALYSIS

The Employer has met its burden of rebutting the single-facility presumption. *Trane*, supra; *R & D Trucking*, supra; *J & L Plate*, supra. In considering the factors that the Board analyzes to determine whether the single-facility presumption has been rebutted, I accord great significance to the centralized control over daily operations and labor relations and the absence of local autonomy at all the Employer's facilities including the Swansea facility; performance of similar skills and job duties, and receipt of identical wages, benefits and other terms and conditions of employment among the Employer's employees; and the collective-bargaining history between the Employer and the Petitioner.

The Petitioner argues that the amount of employee interchange is insignificant, the presence of a dispatcher/plant manager at each facility negate a finding of no local autonomy at the facilities, and that its own geographical organization places the Swansea facility in another jurisdiction from the represented Employer facilities and subject to different area standards.

The Petitioner's assertions contravene the Board's holdings in *Waste Management Northwest*, supra, and *Trane*, supra. In *Waste Management Northwest*, supra at 10, the Board

held that an employer had rebutted the single-facility presumption where, as here, the evidence otherwise established centralized control over labor relations policies; lack of local autonomy and common supervision of employees at the locations; identical skills, duties, and other terms and conditions of employment; and the evidence of interaction and coordination between the groups, which outweighed the geographical distance between the locations and the employer's failure to introduce relevant affirmative evidence demonstrating more than minimal interchange.

Similarly, in *Trane*, supra at slip op. 3, the Board found that despite significant geographic distance of 108 miles between facilities and the failure to present specific evidence of employee interchange, the single-facility presumption was rebutted where there was centralized control over daily operations and labor relations; lack of local autonomy; common supervision; identical skills, duties, and other terms of conditions of employment; and contact between the employees.

The Board pointed out in *Trane*, supra, that the Employer's evidence of interchange, while general in nature, went unchallenged by the Petitioner. Here, while no specific evidence of the frequency or percentage of employee interchange was introduced, the Employer testified that interchange occurred at times on a daily basis depending on the amount of construction in a given area, and that recently Swansea and St. Clair County had seen large increases in residential and commercial new construction. The Petitioner did not challenge the Employer's evidence but rather its own witness testified that drivers from other facilities often worked out of the Swansea facility and he had also regularly worked at other facilities once or twice a month during his employment.

With respect to the Petitioner's assertion that the Employer's facilities have local autonomy in that the dispatchers/plant managers are perceived by employees to have supervisory authority, no evidence was presented indicating any actual exercise of statutory supervisory authority by the dispatchers/plant managers. To the contrary, the record reflects that the dispatchers/plant managers serve, at most, as a conduit of information between the

Employer and the employees. Nor did the Petitioner seek to exclude the dispatchers/plant managers from the unit due to their alleged supervisory authority. Control over daily operations and labor relations, including all hiring and disciplinary actions and wage and benefit determinations, is retained by the president and vice president/office manager. The president visits each facility daily and the vice president/office manager handles all administrative and personnel matters. In *Petrie Stores Corp.*, supra, local autonomy was found not to exist despite the use of individual store managers where the manager's autonomy was severely circumscribed by the authority retained by the supervisor, who personally visited the store under his or her control once every 2 weeks and was responsible for hiring and discipline, and the high degree of centralization of administration and control.

Here, the responsibilities of the dispatchers/plant managers are limited to calling in drivers based on the number and size of customer orders. The dispatching of drivers is determined by employee seniority and does not require any discretionary input from the dispatchers/plant managers. The owners handle all other labor relations and administrative matters. Absent any statutory supervisor at the individual facilities or any other manner of control by the dispatchers/plant managers, I conclude that the lack of local autonomy is sufficient to rebut the single-facility presumption. *Trane*, supra.; *R & D Trucking, Inc.*, supra. (multi-facility unit appropriate where company president supervised employees at both facilities, and there was centralized control over operations, personnel functions, and labor relations); *Petrie Stores Corp.*, supra.

The cases relied on by the Petitioner are distinguishable. In *D&L Transportation*, 324 NLRB 160 (1997), while the factors in that case favored the broader unit, the Board concluded that the evidence did not establish that the Shelton terminal had been so effectively merged into a more comprehensive unit, or was so functionally integrated, that it lost its separate identity. Thus, the evidence regarding local autonomy, common skills and functions, interchange, and geographic proximity of the terminals was sufficient to rebut the single-facility presumption, and

the Board held that the Shelton terminal unit was an appropriate unit. In *D&L*, the facility had a local manager and a local dispatcher and the evidence established that there was local control over hiring, assignments and dispatching, time off, and minor discipline. In addition, while the drivers at each location performed a similar function, the terminal involved was one of only three locations out of seven using monitors, and they were the highest paid monitors because of their skills. Further, while there was a potential for contact with other drivers converging at a common destination to deliver passengers, the evidence of actual contact between the Shelton employees and the employees from other terminals was insignificant and, at best, incidental to transporting passengers to a common site. Moreover, the Shelton location was one of the furthest in distance from the headquarters, and the nearest facility had no monitors. In *J & L Plate*, supra, another case relied on by the Petitioner, the Board held that the separate plants had control over supervision and hiring. The evidence of minimal interchange and the lack of any meaningful contact between employees at the two facilities diminished the significance of the functional integration and distance between the facilities. Also, for the most part, employees performed distinct functions. Unlike the cases cited by the Petitioner, in the instant case, there is sufficient evidence of central control, similarity of skills, interchange, and geographic proximity sufficient to rebut the single-facility presumption.

The Swansea facility has been in existence for about 5 or 6 years, and the Employer has offered to include the drivers employed at the Swansea facility in the multi-facility unit, but the Petitioner has declined. The Petitioner contends that its organization is divided geographically such that the Swansea facility, located in St. Clair County, is in a different jurisdiction with higher area standards from the other counties where the Employer's eight represented facilities are located, and this is a factor for finding a single-facility unit. The Board has consistently refused to predicate an appropriate unit finding upon the scope of a union's territorial jurisdiction. *Bowie Hall Trucking*, 290 NLRB 41 fn. 3 (1988); *Groendyke Transport, Inc.*, 171 NLRB 997, 998 (1968); *John Sundwall & Co.*, 149 NLRB 1022, 1023 (1964); *Paxton Wholesale Grocery Co.*,

123 NLRB 316, 317 (1959). Further, newly represented employees do not automatically come under the terms of a preexisting collective-bargaining agreement. *Wells Fargo Armored Service Corp.*, 300 NLRB 1104 (1990).

Moreover, the bargaining history between the Petitioner and the Employer, where the Petitioner has for several years represented 8 of the Employer's 10 facilities as a multi-facility unit covered by one collective-bargaining agreement, is accorded considerable weight. See, *Spartan Department Stores*, 140 NLRB 608, 610-611 (1963) (where a retail chain bargained in citywide units in other cities, this fact was given substantial weight in arriving at a multi-facility unit determination); *Meijer Supermarkets, Inc.*, 142 NLRB 513, 516 (1963) (bargaining history on a chainwide basis militated in favor of the more comprehensive bargaining unit encompassing additional operations that represented a normal business expansion and not the establishment of an entirely new operation, particularly in view of a multi-facility bargaining history, centralized management and control, geographic integration, and employee interchange). Even where there was a sketchy history of bargaining involving the voluntarily recognized partition of three facilities into two units, the evidence was insufficient to rebut other evidence supporting the sole appropriateness of a three-plant unit given the centralized labor relations, similar wages and benefits, employee interchange, and geographic proximity. *Coplay Cement Co.*, 288 NLRB 66, 68 (1988).

Accordingly, where the evidence establishes centralized control over daily operations and labor relations; similar skills, work duties, wages, benefits, and other terms and conditions of employment; frequent interchange among employees; fairly close geographic proximity; and a history of the Petitioner representing 8 of the Employer's 10 facilities, I conclude that the Employer has successfully rebutted the single-facility presumption. *Trane*, supra; *Waste Management Northwest*, supra; *R & D Trucking, Inc.*, supra; *Dayton Transport Corp.*, 270 NLRB 114, 115 (1984); *Petrie Stores Corp.*, supra. The drivers employed at the Swansea facility do not constitute a functionally distinct group, rather share a sufficient community of interest with

the employees employed at the Employer's Breese, Carlyle, Centralia, Mt. Vernon, Nashville, New Baden, Okawville, and Salem, Illinois facilities to entitle them to be represented by the Petitioner as part of the currently established collective-bargaining unit, if they so desire. *Warner-Lambert Co.*, 298 NLRB 993 (1990); *Bradley Transportation Line*, 137 NLRB 1372 (1962); *Kost Brothers, Inc.*, 124 NLRB 1093 (1959). Accordingly I shall direct a self-determination election in the following voting group for this purpose.⁷

III. FINDINGS AND CONCLUSIONS

Based on 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 claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain

⁷ As the unit found appropriate is substantially different than requested, in the event the Petitioner does not wish to proceed with an election, it may withdraw without prejudice by notice to the Regional Director within 7 days from the date of this decision. Casehandling Manual, Representation Proceedings, Section 11113. See also, *Atlanta Hilton & Towers*, 275 NLRB 1413 fn. 3 (1985).

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 voting group appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All drivers employed by the Employer at its Swansea, Illinois facility, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act, and all other employees.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. The employees in this voting group will vote on whether or not they wish to be represented for purposes of collective bargaining by the Petitioner, Teamsters Local Union No. 50, Petroleum and Allied Trades Division.

If a majority of the valid ballots in the election are cast for the Petitioner, they will be taken to have indicated their desire to be included in the existing multi-facility unit currently represented by the Petitioner. If a majority of the valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the voting group who were employed during the payroll period ending immediately prior to 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: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who 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 that may be used in communication with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 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). The 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 (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received by the Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **August 4, 2004**. No extension of time to file the 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 (314) 539-7794 or by electronic mail at Region14@nrb.gov. 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 OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer shall post the Notices of 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 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.

V. 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., 20570-0001. This request must be received by the Board in Washington by **August 11, 2004**. The request may not be filed by facsimile.

Dated: July 28, 2004
at: St. Louis, Missouri

/s/ [Ralph R. Tremain]
Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14