

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

ELLENSBURG CEMENT PRODUCTS, INC.<sup>1</sup>

Employer

and

Case 19-RC-14531

TEAMSTERS UNION LOCAL 760, 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 record<sup>2</sup> in this proceeding, the undersigned makes the following findings and conclusions.<sup>3</sup>

**SUMMARY**

The Employer is engaged in the production and delivery of ready-mix concrete, sand, and gravel in central Washington State. At issue in this case is whether the petitioned for unit of 23 mixer drivers, dump truck drivers, and delivery drivers is an appropriate unit or if the Employer's proposed wall-to-wall unit of all drivers, production, and maintenance employees, is the more appropriate unit.<sup>4</sup> In short, the Employer contends that the unit sought by Petitioner is inappropriate while the Petitioner maintains that the mixer drivers, dump truck drivers, and delivery drivers are a separate and distinct grouping of employees warranting a unit unto themselves due to their separate supervision, their strict licensing requirements, their routine

---

<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Employer filed a timely brief, which was duly considered.

<sup>3</sup> The hearing officer's rulings 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(s) involved claim(s) 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) and Section 2(6) and (7) of the Act.

<sup>4</sup> In particular, the Employer seeks a wall-to-wall unit including the employees sought by Petitioner and the following classifications of employees: lo-boy truck drivers, off-highway truck drivers, water truck drivers, loader operators, crusher operators, wash plant operators, scale operators, mechanics, and laborers. It is clear from the record that the parties have agreed to exclude office clericals, guards and supervisors as defined in the Act. In view of the record, the parties' arguments, and Board law, I shall exclude office clericals, guards and supervisors from the Unit that I have found appropriate.

contact with customers off-site, and due to the significant time they spend away from the Employer's facilities making deliveries.

Based on the record evidence and the parties' contentions and arguments, I find that the unit sought by Petitioner is inappropriate and that the unit proposed by the Employer is the appropriate unit in the circumstances of this case. Accordingly, I have directed an election in a wall-to-wall unit.

Below, I have provided a section setting forth the evidence, as revealed by the record in this, relating to the Employer's operations and the terms and conditions of employment for employees in the wall-to-wall unit (hereinafter Unit) proposed by the Employer. Following the "Evidence" section is my analysis of the applicable legal standards in this case, my conclusion, and a section directing an election in the Unit.

**I.) EVIDENCE**

**A.) Employer's Operations**

As indicated above, the Employer engages in the production and delivery of ready-mix concrete, sand, and gravel. Its customers include private individuals, contractors, municipalities, and the federal government. The Employer's primary facility is located in Ellensburg, Washington, which includes a batch plant for mixing concrete and a gravel pit. The Employer's other batch plant is located in South Cle Elum, Washington. In addition to its two batch plants, the Employer operates out of six other locations or facilities, which are all located within about 35 miles of the Ellensburg facility. These six other locations provide the raw material for the manufacturing of concrete, sand, and gravel.

To produce ready-mix concrete, sand and gravel, the Employer's gravel pits provide rock material. Next, the Employer's crushing plant breaks large rocks down to smaller sizes and sorts the rocks by size. Pressurized water at the wash plants breaks rock down to create aggregates of sand and gravel. At the batch plants, concrete mixer trucks mix aggregates, cement, and water to manufacture concrete, which the mixer trucks deliver to customers.

Presently, the Employer employs about 50 employees in the Unit during the summer months, which is the Employer's busy season. During the other months of the year, the Employer employs around 35 employees in the Unit. When employees are hired into the wall-to-wall Unit, the Employer informs them that they will be cross-trained and expected to perform many tasks.

**B.) Bargaining History**

From the late 1950s through the late 1970s or early 1980s, Teamsters Local 524 represented a unit substantially similar to the wall-to-wall Unit proposed by the Employer in this case. Sometime after Teamsters Local 524 ceased representing the Employer's employees, Teamsters Local 524 merged with Petitioner.

**C.) Industry Standard**

The Employer contends that in the industry of operations, such as the Employer, there exists an industry standard of wall-to-wall units. In support of this contention, the Employer cites a May 13, 2004, petition filed by Teamsters Local 38 seeking a wall-to-wall unit in an Arlington, Washington employer's ready mix concrete, sand, and gravel operations. The record also contains five collective bargaining agreements showing that other Teamster Locals, in the State of Washington, represent wall-to-wall units of employees at ready mix concrete, sand, and gravel facilities.

**D.) Terms and Conditions of Employment for Unit Employees<sup>5</sup>**

**1.) General Terms and Conditions**

All employees receive the same health and pension benefits, are covered by a uniform employee handbook, and are required to take a drug test at the time of hire. All employees receive Mine Safety Health Administration (MSHA) safety training or a modified MSHA safety training. In December 2003, all permanent employees received \$75.00 in lieu of the annual Christmas party. All employees participate in the Employer's safety incentive program.

**2.) Specific Terms and Conditions for Each of the Unit Job Classifications**

**a.) Mixer Drivers**

These employees drive concrete mixer trucks with spinning barrels and are required to have a Class B Commercial Driver's License ("CDL") in order to drive mixer trucks on the highway. The Employer also prefers that they also have a Class A CDL, so they can drive dump trucks.<sup>6</sup>

In terms of duties and responsibilities, mixer drivers are required to load concrete onto trucks and deliver concrete to customers. According to mixer driver Evan Scheik, mixer drivers spend 80% to 90% of their time driving mixing trucks. However, Scheik also testified that he only spent 3 to 4 hours a day driving and that the rest of his day was spent loading and unloading. Further, Vice President Jeff Hutchinson testified that 20% to 25% of a mixer driver's day is spent at the Employers facilities and not driving, which was corroborated by Steven Matthews, one of the Petitioner's witnesses.

When mixer drivers are not delivering concrete, they are expected to assist laborers by cleaning around the batch plant and unloading freight. They also perform maintenance work, grease bearings for the belts in Employer equipment, and clean the trucks. On a daily basis, mixer drivers run loaders to feed material into the batch plant or to load customers' trucks or dump trucks, especially at the South Cle Elum batch plant. Mixer drivers also drive forklifts to move and stack concrete blocks, which the Employer produces on a daily basis out of excess concrete. Mixer drivers occasionally drive off-highway trucks,<sup>7</sup> and about once every few months, mixer drivers drive the Employer's water truck around the Employer's facilities to water down the roads. Mixer drivers also interact with mechanics to assist the mechanic in diagnosing and repairing problems with mixing trucks.

Mixer drivers start their day at the Ellensburg facility and they receive their instructions from Dispatcher Brent Sny, who supervises the mixer drivers.<sup>8</sup> Mixer truck drivers work 5 to 6

---

<sup>5</sup> I note that Petitioner seeks a unit of all mixer drivers, dump truck drivers and delivery drivers." However, it is clear from the record that the Employer does not employ a classification of employees called "delivery drivers." Nonetheless, it is clear from the record that Petitioner is seeking mixer drivers and dump truck drivers who perform deliveries outside the Employer's numerous facilities.

<sup>6</sup> The record reveals that about 32 of the 50 employees in the Unit, possess a CDL. Thus, a significant number of employees, beyond those sought by Petitioner, also possess a CDL.

<sup>7</sup> The record indicates that employee Royce Reynolds worked as an off-highway driver and later transferred into a mixer driver position.

<sup>8</sup> The parties stipulated to the exclusion of Sny from the Unit in that he is a supervisor as that term is defined in Section 2(11) of the Act. In light of the record and the parties' stipulation, I shall exclude Sny from the Unit.

days a week from 7:00 a.m. to 4:30 p.m. and are paid between \$15.00 and \$17.15 an hour. They also work 10 to 12 hours of overtime a week.

**b.) Dump Truck Drivers**

Dump truck drivers drive 10-yard dump trucks and regularly pull trailers, both of which hold gravel. A dump truck driver is required to have a CDL. Dump truck drivers haul and deliver gravel to all of the Employer's customers, from Employer facility to facility, and within those facilities or locations.

Dump truck driver John Cushman testified that 95% of his day was spent delivering gravel to customers. When dump truck drivers are not making deliveries to customers, they perform other tasks at the Employer's facilities. At least once a week, and sometimes on a daily basis during the busy season, dump truck drivers operate loaders to load their own trucks. On occasion, dump truck drivers operate loaders to feed material into the wash plant, and they use loaders to feed the batch plant about once every few months. Approximately once a month, a dump truck driver loads and weighs a customer's truck and completes the scale ticket. At some of the Employer's remote facilities, dump truck drivers load and weigh their own trucks and they fill-out the scale tickets. Dump truck drivers and loader operators routinely interact with each other because dump truck drivers tell loader operators what materials they need.

During the winter of 2004, several dump truck drivers worked in the Employer's pit operations, at some of its facilities but the record did not specify the exact duration of time this work. Employer testimony reveals that several times a month, dump truck drivers drive off-highway trucks. However, two dump truck drivers' testimony indicated that they drove off-highway trucks during short-term projects that occurred 10 years ago and two years ago. Regardless, dump truck drivers Rob Goodwin and Duncan Braithwaite operate the Employer's lo-boys transport vehicle once every few months, and during the Spring of 2004, a dump truck driver operated the lo-boy for a couple of weeks. When a customer places a large order for concrete, or there is a large pour, dump truck drivers also operate mixer trucks. About once a week, a dump truck driver drives the water truck to water down the facilities' roads.

Every few weeks, dump truck drivers run the wash plant when production is behind schedule. Whenever there is a problem with a dump truck, dump truck drivers interact with mechanics to assist the mechanics in diagnosing and repairing those trucks. At least several times a year, dump truck drivers operate bulldozers in the Employer's operations. About once a month, dump truck drivers operate forklifts to unload freight trucks.

Dump truck drivers' routes vary and they generally start their shift at the Employer's Ellensburg facility. Dispatcher Kevin Weyand assigns dump truck drivers to delivery routes and is responsible for supervising them.<sup>9</sup> Dump truck drivers work 5 to 6 days a week, Monday through Saturday. Their hours are generally from 7:00 a.m. to 4:30 p.m., and they are paid between \$16.00 and \$16.95 an hour. On average, dump truck drivers work approximately 12 hours of overtime a week.

---

<sup>9</sup> At the time of the hearing, the record indicated that Weyand is working elsewhere in the Employer's operations, while Danny Leader assumed Weyand's dispatcher position as a dispatcher "in training." Neither Petitioner nor the Employer is seeking to include dispatchers in the unit. The record also indicates that Weyand may be currently working in a Unit position while Leader may be a "dual function employee" performing some dispatcher duties but also performing some Unit work. On the basis of the record and the parties' positions and arguments, I cannot determine these two individuals unit placement and/or eligibility. Accordingly, Weyand and Leader may vote subject to challenge.

**c.) Off-Highway Drivers**

Off-highway drivers operate many types of trucks, including 30-ton trucks, to haul rock from the crushers to the wash plant or to different stockpiles, to haul material back to the crusher, and to haul material away from settling ponds as some of the Employer's facilities. Off-highway drivers also perform maintenance on the crusher. These drivers are not licensed for highway use and the off-highway drivers are not required to have a CDL or formal training. However, from time to time, the Employer has assigned off-highway drivers, who have CDLs and who have sporadically driven mixer trucks and dump trucks, to deliver products, though the record evidence does not contain any specific examples of such assignments. Once every few months, an off-highway driver drives the Employer's lo-boy transport vehicle. Dump truck drivers and the lo-boy driver have also covered for absent off-highway drivers and off-highway drivers have used mixer trucks to water the Employer's roads when the water truck has broken down.

Depending on which pit the Employer is using, the off-highway drivers start their shifts at either the Ellensburg pit/facility or the South Cle Elum pit/facility. Superintendent George Seubert supervises this class of employees.<sup>10</sup> Off-highway drivers work between 3 to 6 days a week and from 6:00 a.m. to 9:00 p.m. Generally, they work three, 15-hour days a week. One crew works Monday through Wednesday and the other crew works Thursday through Saturday. Off-highway drivers are paid between \$14.50 and \$17.00 an hour. They also work roughly 10 hours of overtime a week.

**d.) Lo-Boy Driver**

There is one driver who drives a lo-boy truck. A lo-boy is a drop deck trailer that is used to load and deliver equipment to the Employer's other facilities. The lo-boy truck delivers equipment such as loaders, off-highway trucks, excavators, and bulldozers. A lo-boy driver is required to have a CDL. In addition to delivering equipment, the lo-boy driver spends roughly 35% of his time hauling gravel to customers or between the Employer's facilities. In order to haul gravel, a trailer is attached to the lo-boy truck. The lo-boy driver and the dump truck drivers interact frequently when they haul gravel to the same job.

During the busy season, the lo-boy driver drives the mixer truck several times a month and he drives dump trucks between one and four times a month. On a weekly basis, the lo-boy driver hooks the water truck to the lo-boy truck and waters down the roads at the Employer's remote facilities. When the lo-boy operator is absent, either dump truck drivers Duncan Braithwaite or Rob Goodwin or crusher operator George Seubert, Jr. replace him.<sup>11</sup>

The lo-boy driver starts his shift at the Ellensburg facility and is supervised by Vice President Jeff Hutchinson. The lo-boy driver works approximately 5 to 6 days a week, is paid \$17.50 an hour, and works between 12 to 15 hours of overtime per week.

---

<sup>10</sup> Based on the record and the parties' positions in this case, I shall exclude the Employer's Superintendent (George Seubert), President (James O. Hutchinson) and Vice President (James Jeffrey Hutchinson) from the unit inasmuch as they possess indicia of supervisory status as that term is defined in Section 2(11) of the Act and/or because they are managers as that term as been defined by Board law.

<sup>11</sup> George Seubert, Jr. also possesses a CDL. While the Employer's president and vice president are father and son, the record is not clear on the relationship of Superintendent Seubert and employee George Seubert, Jr.

**e.) Scale Operators**

Scale operators weigh trucks, fill-out tickets recording trucks' weight, and complete paperwork for drivers regarding their delivery destination. Scale operators generally weigh gravel trucks, unless the mixer truck is used to deliver gravel. Because scale operators are responsible for completing scale tickets, which describe the material being transported and the delivery destination, they frequently interact with both the dump truck drivers and mixer drivers. Scale operator Tom Applegate has also driven a loader, but the record does not specify the nature and extent of this loader work.

Scale operators are supervised by Jeff Hutchinson and work Monday through Friday from 7:00 a.m. to 4:30 p.m. They and earn between \$10.00 and \$12.00 an hour and average about 10 to 12 hours of overtime a week.

**f.) Loader Operators**

Loader operators operate front-end loaders that have buckets in the front. Some of the loaders have teeth and some have straight edges. Loaders dig into banks of earth and/or lift material that is then loaded onto dump trucks, off-highway trucks, and customer trucks. Loader operators load off-highway trucks with material for delivery or hauling; feed material into the wash plants and crushers; pack material; and/or perform maintenance on the crusher. They are not required to have CDLs, though some loader operators have a CDL.

Occasionally, loader operators drive mixing trucks and, on a daily basis, drive dump trucks or off-highway trucks in and about the Employer's gravel pits. When a loader operator drives a dump truck in a gravel pit, they do not need a CDL, as a CDL is only required for driving dump trucks on the highway. The record indicates that loader operators sporadically drive mixer trucks outside of the gravel pits. On a daily basis, loader operators drive water trucks. Loader operators do not drive the lo-boy truck, but they frequently drive the off-highway trucks and operate bulldozers.

Loader operators, working at the wash plants and the gravel pits, work 5 to 6 days a week while the loader operators working on crushers work three, 15-hour days a week. Superintendent Seubert supervises the loader operators who work in the wash plant and on the crusher and Jeff Hutchinson supervises the loader operators working at the remote pits. Loader operators are paid between \$14.00 and \$17.75 an hour and work an average of 5 to 12 hours of overtime a week.

**g.) Plant Operators/Crusher Operators**

Plant operators at the wash plant run the plant and the loader. Crusher operators monitor the crushing operation to ensure that the crusher continues to operate as material enters the crusher and they also instruct loader operators on what to dump into the crusher. Crusher operators are not required to have formal training or licensing to work as a crusher operator.

Plant operators routinely work on their scheduled days off to perform other jobs such as running loaders, driving off-highway trucks, driving dump trucks, running excavators, and driving the water truck. During the busy season, crusher operators drive dump trucks in the pit at least once a week. Crusher operators also interact with dump truck drivers because the crusher operators instruct dump truck drivers on where to haul and dump material that needs to be crushed. Occasionally, crusher operators will also drive either the mixer truck or the dump truck to deliver product to customers; however, a crusher operator must have a CDL to deliver product to customers. The record reflects that approximately one to two years ago, a crusher

operator drove a mixer truck on his days off. Plant operator George Seubert, Jr. occasionally drives the lo-boy truck to deliver products to customers. At least once a week, crusher operators drive water trucks. During the off-season, crusher operators also assist mechanics in the shop.

Superintendent Seubert supervises crusher operators. They work 3, 15-hour days a week running the crusher. Plant/Crusher operators are paid between \$16.50 and \$18.25 an hour and they work at least 10 hours of overtime a week.

#### **h.) Wash Plant Operators**

Wash plant operators operate the wash plants and loaders, load customers' trucks, load mixer trucks, and perform maintenance and clean-up work around the wash plant. Wash plants are located at the Employer's Ellensburg and West Cle Elum facilities. Wash plant operators are not required to have formal training or a specific type of license.

On a weekly basis, especially during the busy season, wash plant operators drive dump trucks in the Employer's gravel pits. Wash plant operators drive water trucks on a daily basis and drive off-highway trucks at least once a week during the busy season. Wash plant operators interact with dump truck drivers when they instruct Employer dump truck drivers on where to dump material that the drivers are hauling.

Both Superintendent Seubert and Vice President Hutchinson supervise wash plant operators. They work 5 to 6 days a week for 10 hours a day and are paid between \$14.50 and \$18.00 an hour. During the busy season, wash plant operators work 10 to 12 hours of overtime a week.

#### **i.) Mechanics**

Mechanics work on mixer trucks, dump trucks, crushers, and repair anything that needs to be fixed at any of the Employer's facilities. Mechanics are not required to have formal training or licensing, except for a CDL, which is necessary to test drive dump trucks and mixer trucks and to drive the mechanics' truck from facility to facility. Mechanics do not make deliveries to customers. Mechanics operate forklifts to unload freight trucks and to lift equipment on which they are working.

The night shift mechanics work out of a shop, but mechanics working other shifts work out of all the facilities.<sup>12</sup> Every third Saturday, the night shift mechanic works on the loaders and the day shift mechanic repairs any broken down equipment at the gravel pits. The mechanics are supervised by Superintendent Seubert and work 5 days a week and every third Saturday. One mechanic works from 5:00 a.m. until 4:00 p.m. and the other mechanic works from 5:00 p.m. until 2:30 a.m. or 3:00 a.m. They are paid between \$16.00 and \$17.50 an hour and currently work about 10 hours of overtime a week.

#### **j.) Laborers**

Laborers are responsible for washing trucks, sweeping floors, cleaning underneath the batch plant, cleaning underneath the hoppers, cleaning the parking lot, and moving concrete blocks. Laborers interact with mixer drivers while they clean up around the plants and they often work together loading and moving the concrete blocks produced by the Employer.

---

<sup>12</sup> The Employer did not elaborate on the precise location of the mechanic's shop.

One laborer works in the shop and other laborers work at the wash plant and crushing plant facilities.<sup>13</sup> They are supervised by Superintendent Seubert, work from 10:00 a.m. until 7:00 p.m., and earn between \$12.50 and \$15.50 an hour. Occasionally, laborers work as much as 10 hours of overtime a week.

## II.) LEGAL ANALYSIS

Section 9(b) of the Act confers on the Board the discretion to establish the unit appropriate for collective bargaining and to decide whether such unit shall be the employer unit, craft unit, plant unit, or subdivision thereof. There is nothing in the Act which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be “appropriate,” that is, appropriate to insure that employees in each case have “the fullest freedom in exercising the rights guaranteed by this Act.” *Bartlett Collins Co.*, 334 NLRB No. 76 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996).

The Board has found that drivers may constitute an appropriate unit when the drivers involved constituted functionally distinct and homogeneous groups whose duties and interests were different and distinct from those of the employer’s other employees. *Ballentine Packing Company, Inc.*, 132 NLRB 923, 925 (1961); *Reichhold Chemicals, Inc.*; 126 NLRB 619, 620 (1960); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Mc-Mor-Han Trucking*, 166 NLRB 700, 701 (1967); and *E. H. Koester Bakery, Co.*, 136 NLRB 1006, 1011 (1962). In this regard, the Board has acknowledged that truck drivers often have a dual community of interest, with certain factors supporting their inclusion in the same unit as other plant or production employees and certain factors favoring their representation in a separate unit. See *Pacemaker Mobile Homes*, 194 NLRB 742, 743 (1971). However, the Board has found a wall-to-wall unit to be appropriate when drivers regularly spend a substantial amount of their time in the performance of the same functions as plant or production employees, and when the drivers and the plant or production employees share a close community of interest and are so functionally integrated as to preclude the representation of the drivers in a unit apart from the plant or production employees. *Calco Plating, Inc.*, 242 NLRB 1364, 1365 (1979); *Standard Oil Company*, 147 NLRB 1226, 1228 (1964). In short, the Board permits truck drivers to be represented either separately or as part of a more comprehensive unit depending upon the community of interest of the employees involved and the desires of the petitioning union. *Mc-Mor-Han Trucking Co., Inc.*, 166 NLRB 700, 701 (1967)(discussing *Marks Oxygen Co.*, 147 NLRB 228 (1964)).<sup>14</sup>

Here, Petitioner contends that the mixer and dump truck drivers, who perform delivery work, constitute an appropriate unit because those employees fall under separate supervision; spend most of their time on the road driving; interact with customers; and possess a CDL. See *Mc-Mor-Han Trucking Co.*, supra.

While I note that mixer and dump truck drivers have separate supervision from the balance of employees in the Unit, this factor of separate supervision does not turn the tide in Petitioner’s favor. In particular, the record reveals significant interchange among the employees in the Unit sought by the Employer and with that interchange it would appear that there is an

---

<sup>13</sup> As with the mechanics, the precise location of the “shop” is not clear from the record. Additionally, it is not clear from the record what days of the week the laborers work.

<sup>14</sup> Local drivers and over-the-road drivers constitute separate appropriate units where it is shown that they are clearly defined homogenous and functionally distinct groups with separate interests which can effectively be represented separately for bargaining purposes. *Georgia Highway Express*, 150 NLRB 1649, 1651 (1965); *Alterman Transport Lines*, 178 NLRB 122 (1969); *Jocie Motor Lines*, 112 NLRB 1201, 1204 (1955); *Gluck Bros.*, 119 NLRB 1848 (1958). Compare *Carpenter Towing*, 266 NLRB 907 (1983).

overlap of supervision.<sup>15</sup> Moreover, a finding of separate supervision, alone, does not support finding that the unit sought by Petitioner is appropriate.

Regarding mixer and dump truck drivers spending most of their time away from the Employer's facilities delivering product to customers, other Unit employees perform the same type of work on a frequent basis and not only have contact with Employer customers away from the Employer's facilities, but also have contact with customers when they come to the Employer's facilities to pick up Employer products.

Petitioner finally points to the fact that mixer and dump truck drivers are required to possess a CDL. However, maintenance employees and the lo-boy driver are also required to possess such a license and 32 out of the approximately 50 Unit employees possess such a license.<sup>16</sup> Aside from the mixer and dump truck drivers, other employees with a CDL are utilized by the Employer on a frequent and regular basis to perform delivery work to the Employer's customers.<sup>17</sup>

In light of the above and the record as a whole, I do not find that the mixer and dump truck drivers constitute a functionally distinct and homogeneous group whose duties and interests are different and distinct from those of other employees in the Unit. Rather, as demonstrated below, Unit employees share an overwhelming community of interest supporting the conclusion that a wall-to-wall unit is appropriate in the circumstances of this case.

Many considerations enter into a finding of community of interest. See, e.g., *NLRB v. Paper Mfrs. Co.*, 786 F.2d 63 (3<sup>rd</sup> Cir. 1986). The factors affecting the ultimate unit determination may be found in the following sampling: 1.) degree of functional integration;<sup>18</sup> 2.) common supervision;<sup>19</sup> 3.) the nature of employee skills and functions;<sup>20</sup> 4.) interchangeability and contact among employees;<sup>21</sup> 5.) work situs;<sup>22</sup> 6.) general working conditions;<sup>23</sup> and 7.) fringe benefits.<sup>24</sup> "The manner in which a particular employer has organized his plant and utilizes the

---

<sup>15</sup> The record did not provide readily discernible evidence on the issue of supervisory overlap. However, I note that some of the Employer's facilities do not have onsite supervision; the dispatcher's work situs is limited to one facility, and that dispatchers report directly to Jeff Hutchinson. Under these circumstances, it would appear reasonable to assume that some overlap in supervision has to occur in the Employer's integrated production and delivery process.

<sup>16</sup> Granted, most of the 32 make up the unit of employees sought by Petitioner.

<sup>17</sup> I note, that the record does not specify in great detail (e.g., employee names, dates, hours, nature of work, etc.), the regularity and frequency of delivery work performed by all Unit employees. Additionally, the record does not specify in detail the regularity and frequency with which mixer and dump truck drivers performed work other than delivery work. However, Petitioner failed to rebut much of the record evidence in this regard.

<sup>18</sup> *Seaboard Marine Ltd.*, 327 NLRB 556 (1999); and *Transerv Systems*, 311 NLRB 766 (1993).

<sup>19</sup> *Harron Communications*, 308 NLRB 62 (1992); *Sears, Roebuck & Co.*, 319 NLRB 607 (1995).

<sup>20</sup> *Overnite Transportation Co.*, 331 NLRB No. 85 (2000) (all unskilled employees at particular location); *J. C. Penney Co.*, 328 NLRB 766 (1999); *Harron Communications*, supra; *Downingtown Paper Co.*, 192 NLRB 310 (1971); *Phoenician*, 308 NLRB 826 (1992).

<sup>21</sup> *J. C. Penney*, supra; *Associated Milk Producers*, supra; *Purity Supreme, Inc.*, 197 NLRB 915 (1972); *Gray Drug Stores*, 197 NLRB 924 (1972); *Michigan Bell Telephone Co.*, 192 NLRB 1212 (1971).

<sup>22</sup> *R-N Market*, supra; *Bank of America*, 196 NLRB 591 (1972); *Kendall Co.*, 184 NLRB 847 (1970).

<sup>23</sup> *Allied Gear & Machine Co.*, 250 NLRB 679 (1980); *Sears, Roebuck & Co.*, supra; *Yale University*, 184 NLRB 860 (1970). See also *K.G. Knitting Mills*, 320 NLRB 374 (1995), where the Board held that the fact that employees receive a salary, do not punch time clocks, receive different health insurance benefits from other unit employees, and are able to adjust their own hours was not an adequate basis for exclusion from the unit.

<sup>24</sup> *Allied Gear & Machine Co.*, supra; *Donald Carroll Metals*, supra; *Cheney Bigelow Wire Works*, 197 NLRB 1279 (1972).

skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is, thus, an important consideration in any unit determination.” *International Paper Co.*, 96 NLRB 295, 298 fn. 7 (1958).

With regard to the degree of functional integration, all employees play an integral role in the production and delivery of the Employer’s product and the Employer. Consequently, the Employer expects employees to be cross-trained and to be able to perform tasks outside of their primary duties. Indeed, the record reveals that all Unit employees frequently perform tasks primarily performed by other classifications of employees in the Unit.

With respect to supervision, Dispatchers Sny and Weyand supervise the drivers while the other production and maintenance employees are supervised by either Vice-President Hutchinson or Superintendent Seubert. This factor alone does not make a separate unit of and mixer and dump truck drivers appropriate. See *Texas Empire Pipe Line Co.*, 88 NLRB 631 (1950). Indeed, a significant amount of dump truck driver work is performed in and about the Employer’s facilities by employees who do not report directly to the dispatchers. Moreover, it is reasonable to assume, based on the instant record, that some overlap in supervision must necessarily occur on a daily basis in view of the relatively high degree of integration and interchange noted above and below.

Regarding the nature of skills and functions performed by Unit employees, the record establishes that the dump truck drivers and the mixer drivers are required to have a CDL. The record further establishes that the lo-boy driver and maintenance employees are also required to have a CDL. In fact, 32 of the approximately 50 Unit employees possess a CDL. Moreover, a CDL is not required to drive mixer and dump trucks in and about the Employer’s facilities; indeed, such work is performed by employees other than those sought by Petitioner.

While mixer and dump truck/delivery drivers have routine contact with customers, other Unit employees have contact with customers who come to the facilities to load up their own trucks with the Employer’s product. Additionally, Unit employees, other than mixer and dump truck drivers, are assigned to make to deliveries.

In terms of interchange and contact among employees, there is ample evidence that employees perform other tasks outside of their primary tasks. The record establishes such frequent interchange and/or contact. In particular, at the outlying gravel pits, dump truck drivers use loaders to load up their trucks and they proceed to weigh their trucks and complete their own scale tickets. This is necessary because scale operators and loader operators frequently do not work out at the remote pits. The Lo-boy driver spends a third of his time delivering gravel to customers. Dump truck drivers Rob Goodwin and Duncan Braithwaite operate the lo-boy once every few months. Mixer drivers spend roughly 25 percent of their workday at the plants and when they are not driving, they clean, perform maintenance work, run loader operators, and drive forklifts carrying concrete blocks. All employees, irrespective of job classification, are expected to drive the water truck or use the mixer truck/dump truck to water down the dust in the Employer’s facilities. The record also clearly establishes that

whether employees are performing their primary duties or interchanging with other classifications of employees, contact is regular, frequent, and often necessary among Unit employees.

With respect to work situs, the record demonstrates that Unit employees regularly work at the Employer's nine facilities. In terms of working conditions, the same employees work a similar number of regular and overtime hours. Many of the Unit job classifications share substantially similar wage rates and/or fall within the same wage ranges. Unit employees also receive the same health and pension benefits and are subject to the same employee handbook.

### **III.) CONCLUSION**

In view of the above, the record as a whole and the parties' arguments, I find that the following Unit of employees share a sufficient community and, thus, constitute an appropriate unit for the purposes of collective bargaining.<sup>25</sup> Accordingly, I shall direct an election in the following unit of employees (hereinafter "Unit"):

All full-time and regular part-time mixer drivers, dump truck drivers, off-highway truck drivers, lo-boy truck drivers, scale operators, loader operators, plant operators, crusher operators, wash plant operators, water truck drivers, mechanics, and laborers employed by the Employer in and about its Central Washington operations; excluding office clericals, guards and supervisors as defined by the Act.

There are approximately 50 employees in the Unit.

### **IV.) DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who 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

---

<sup>25</sup> See *Calco Plating Inc.*, supra and *Standard Oil Company*, supra.

represented for collective bargaining purposes by TEAMSTERS UNION LOCAL 760, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.

**A.) 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 Regional Director for Region 19 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 Region 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 Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before July 16, 2004. 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 (206) 220-6305. 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.

**B.) Notice of 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.

**C.) 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 July 23, 2004.

**DATED** at Seattle, Washington, this day of July 9, 2004.

/s/ Richard L. Ahearn  
Richard L. Ahearn, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174