

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

(Stockton, CA)

**SIMS GROUP USA CORPORATION
d/b/a SIMS METAL MANAGEMENT**

Employer,

and

32-RD-067599

ERIC JAMES VILLARREAL,

Petitioner,

and

**LABORERS UNION, LOCAL 886 and
NORTHERN CALIFORNIA DISTRICT
COUNCIL OF LABORERS**

Unions

DECISION AND DIRECTION OF ELECTION

Sims Group USA Corporation d/b/a Sims Metal Management, a California corporation, herein called the Employer, is engaged in the business of recycling ferrous and non-ferrous metals at facilities in multiple states and internationally, including its facility in Stockton, California. The Northern California District Council of Laborers, herein called the District Council, and Laborers Union, Local 886, herein called Local 886, jointly represent a collective-bargaining unit, herein called the Unit, consisting of all full-time and regular part-time sub-foremen, baler operators, maintenance mechanics, burners, welders, truck drivers, metal sorters, bulldozer operators, tin press operators, hydraulic crane operators, shearmen, forklift operators, pay load operators, switchmen,

hook tenders, slingers, laborers, picker/cleanup employees, and trainees, employed by the Employer at its Stockton facility. On October 26, 2011, Eric James Villarreal, an individual, herein called the Petitioner or Petitioner Villarreal, filed the instant decertification petition pursuant to Section 9(c) of the National Labor Relations Act, herein called the Act, to decertify the Unit's bargaining representative, which is identified in the petition as being Local 886.

On October 26, 2011, Petitioner Villarreal, the Employer, and Local 886 were served with a copy of the petition along with the Notice of Representation Hearing. On November 1, 2011, Petitioner Villarreal, the Employer, Local 886, and the District Council were served with an Order Rescheduling Hearing.

A hearing officer of the Board held a hearing in this matter on November 10, 2011. Petitioner Villarreal, the Employer, and Local 886 entered appearances at the hearing. Although counsel for the District Council was present at the hearing, he stated he was only present on behalf of Local 886. Despite these representations by counsel, he submitted a post-hearing brief, which he signed on behalf of both Local 886 and the District Council and which I have duly considered. Accordingly, I find that both entities of the Union were provided adequate notice of these proceedings.

As evidenced at the hearing and on brief, the sole issues before me are whether the petition supports a decertification of both Local 886 and the District Council, the labor organization status of Local 886 and the District Council, and the appropriate

unit.¹

With respect to whether the petition supports a decertification of both Local 886 and the District Council, it is readily apparent that the Petitioner's intention in filing the petition was to eliminate the Unit's extant bargaining representative, which, according to the parties' collective-bargaining agreement consisted of both Local 886 and the District Council as the joint collective bargaining representative of the Unit employees. Moreover, the intention to decertify both Local 886 and the District Council was made clear at the hearing for which the District Council received notice. Accordingly, I find that the petition applies to both Local 866 and the District Council.

With respect to the labor organization status of the District Council, the record reflects that it, along with Local 886, has entered into a collective-bargaining agreement with the Employer, herein called the Agreement, which is effective on its terms between October 20, 2008 and October 19, 2013, and sets forth the current rates of pay and other terms and conditions of bargaining unit employees. The Agreement's recognition clause states that the contract is between the Employer, the District Council, and Local 886, and it was executed by the Employer's General Manager, the District Council Business Manager, and the Local 886 Business Agent.

I take administrative notice of the website of the District Council in which it describes itself as the agent for negotiating and administering collective-bargaining contracts on behalf of its constituent locals. The website names those constituent locals,

¹ In its brief, Local 886 also requested that I review and scrutinize the showing of interest because of its asserted reason to believe that the showing of interest was only directed at ousting Local 886 and not the recognized bargaining agent, the District Council and Local 886. Immediately upon the filing of this petition an administrative review established that the showing of interest is adequate to process the instant petition. In any event, the adequacy of the showing of interest is an administrative matter not subject to litigation. See *O.D. Jennings & Co.*, 68 NLRB 516 (1946); *General Dynamics Corp.*, 175 NLRB 1035 (1969); *River City Elevator Co.*, 339 NLRB 616 (2003).

one of which is Local 886. I also take administrative notice of multiple Board decisions in which the District Council either admits or is found to be a labor organization within the meaning of Section 2(5) of the Act. See e.g., *Cen-Vi-Ro Pipe Corp. (Northern California District Council of Laborers)*, 180 NLRB 344, 345 (1969); *C. Overaa and Company*, 291 NLRB 589, 590 (1988); *Northern California District Council of Laborers (Mustang Construction, Inc.)*, 305 NLRB 809 (1991); *Northern California District Council of Laborers (RMC Lonestar)*, 309 NLRB 412 (1992); and *BE&K Construction Co.*, 329 NLRB 717, 719 (1999).

With respect to the labor organization status of Local 886, the record reflects that it is an organization in which employees participate and with which the Employer has dealt concerning employee grievances, labor disputes, rates of pay, hours of employment, or conditions of work. Thus, Employer Regional Human Resources Manager Paul Quezada provided testimony that the Employer currently recognizes Local 886 as the collective-bargaining representative of the unit employees. Furthermore, the Employer submitted documentary evidence, including payroll records, which demonstrate, pursuant to the union security and dues checkoff provisions of the Agreement, that dues were remitted to Local 886 by the Employer on behalf of bargaining unit employees. In addition, Petitioner Villareal testified that he has regularly submitted dues to Local 886 and been involved in the resolution of grievances by Local 886 representatives on behalf of unit employees.

In light of the above, I find that both Local 886 and the District Council are labor organizations within the meaning of Section 2(5) of the Act.

As regards the issue of the appropriate unit, it is well-settled that in a decertification election the bargaining unit in which the election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *WT Grant Co.*, 179 NLRB 670 (1969); *Bell & Howell Airline Service Co.*, 185 NLRB 67 (1970); *Mo's West*, 283 NLRB 130 (1987). Here, the unit sought by Petitioner Villarreal is co-extensive with the contractually recognized unit. No other issues having been raised by the parties at the hearing or on brief, I find that a question concerning representation exists and that the Petitioner's petition should be processed. Accordingly, I direct an election.

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 affirmed.
2. The parties stipulated, and I find, that 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.²
3. I find that Local 886 is a labor organization within the meaning of Section 2(5) of the Act and that the District Council is a labor organization within the meaning of Section 2(5) of the Act.
4. Local 886 and the District Council claim to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of

² The parties stipulated that during the past twelve months, the Employer provided goods and services valued in excess of \$50,000 directly to customers located outside the state of California.

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 full-time and regular all part-time sub-foremen, baler operators, maintenance mechanics, burners, welders, truck drivers, metal sorters, bulldozer operators, tin press operators, hydraulic crane operators, shearmen, forklift operators, pay load operators, switchmen, hook tenders, slingers, laborers, picker/cleanup employees, and trainees, employed by the Employer at its Stockton facility; excluding all other employees, guards, and supervisors as defined in the Act.

There are approximately 13 employees in the unit.

DIRECTION OF ELECTION

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 **Laborers Union, Local 886 and Northern California District Council of Laborers**. 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.

Voting Eligibility

Eligible to vote in the election are those in each unit who were 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 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.

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 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list for each of the separate collective-bargaining units, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). Each 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 the Petitioner.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **December 5, 2011**. 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 to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,³ by mail, by hand or courier delivery, or by facsimile transmission at (510) 637-3315. The burden of establishing the timely filing and receipt of the list will continue to be placed upon the sending party.

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 or electronically, in which case only **one** copy need be submitted. If you have any questions, please contact the Regional Office.

Notice of 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 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper

³ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's website, www.nlr.gov.

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.

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 5 p.m., EST on **December 12, 2011**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁴ but may **not** be filed by facsimile.

Dated: November 28, 2011.

/s/ William A. Baudler
William A. Baudler, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

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⁴ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's website, www.nlr.gov.

