

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

ATLAS CONCRETE, LLC

Employer/Petitioner

and

Case 07-RM-357550

**LOCAL 406, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS (IBT)**

Union

DECISION AND ORDER

This case presents the issue of whether to order an election, or dismiss the petition, where an employer asserts that it will imminently cease operations at the facility where the employees who are the subject of the Union's demand for recognition are employed.¹ Prior to the filing of the instant Petition, the Union demanded that the Employer/Petitioner voluntarily recognize the Union as the exclusive collective bargaining representative of a unit of approximately 13 employees employed by the Employer/Petitioner at its Marshall, Michigan jobsite (Marshall facility), a concrete operation located on property owned by Ford Motor Company (Ford). The Employer/Petitioner seeks dismissal of its Petition contending that it will cease operations at the Marshall facility on or by April 15, 2025,² resulting in the termination of the employees sought for recognition with no reasonable expectation of any future work at any other Employer/Petitioner sites. In contrast, the Union argues that the petition should not be dismissed because the evidence fails to meet the Board's requisite showing that the Employer/Petitioner's cessation of operations is both "imminent and certain."

On January 13, a hearing officer of the Board conducted a video hearing, during which the parties presented their positions and supporting evidence. The parties stipulated to the following appropriate unit of approximately 13 employees:

All full-time and regular part-time mixer drivers, loader operators, and mechanics; but excluding office clerical employees, managerial employees, professional employees, and guards and supervisors as defined in the Act, and all other employees.³

Pursuant to Section 3(b) of the Act, the Board has delegated the authority to decide this matter

¹ On December 17, 2024, the Union demanded that the Employer/Petitioner voluntarily recognize it as the exclusive collective bargaining representative of the unit involved herein.

² All dates are in 2025 unless otherwise specified.

³ The parties' stipulation did not include an employer location. The record evidence is clear, and I find, that the unit is specific to the Employer/Petitioner's operation at 13700 W. Michigan Avenue, Marshall, Michigan.

to me. Having considered the evidence, the Employer/Petitioner's brief,⁴ and the entire record,^{5 6} I find that the Employer/Petitioner has met its burden of establishing that the cessation of operations is both imminent and certain, and thus it would not effectuate the purposes of the Act to order a representation election. Accordingly, I am dismissing the petition.

I. FACTS

In about July to August 2023, the Employer/Petitioner, a redi-mix concrete manufacturer, submitted a bid to general contractor Walbridge to perform concrete work for foundations and pavement at the construction of the Ford BlueOval battery plant⁷ in Marshall, Michigan. The Employer/Petitioner was awarded the bid and began work at the Marshall facility in September 2023. Ford owns the property consisting of the Employer/Petitioner's Marshall facility. At the commencement of work in September 2023, the Employer/Petitioner set up two onsite mixing plants to create and mix concrete on site.⁸ The Employer/Petitioner hired local loader operators, drivers, and mechanics to mix and load the concrete at the Employer/Petitioner's onsite mixing plants onto concrete trucks for delivery to the onsite construction. The loader-operators are responsible for mixing the raw materials loading the concrete onto delivery trucks; the mixer drivers are responsible for loading their trucks with concrete, driving to the construction site and dumping the concrete there; and the mechanics are responsible for repairs and maintenance of the Employer/Petitioner's onsite leased

⁴ The Union did not file a brief.

⁵ The parties stipulated and I find:

- a. The Employer/Petitioner, a Michigan limited liability company with an office and place of business in Marshall, Michigan, is engaged in the manufacture of redi-mix concrete. During the calendar year ending December 31, 2024, the Employer/Petitioner purchased and received at its Marshall, Michigan facility goods valued in excess of \$50,000 directly from points located outside the State of Michigan.
- b. The Employer/Petitioner is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The Union is a labor organization within the meaning of Section 2(5) of the Act.
- d. The Union seeks to represent certain employees of the Employer/Petitioner in the unit described in the instant petition, and the Employer/Petitioner declines to recognize the Union as the collective-bargaining representative of those employees.
- e. There is no collective-bargaining agreement covering any of the employees in the voting group described in this petition and the parties do not contend there is any contract bar to this proceeding.
- f. There is no history of collective bargaining involving the petitioned-for unit.

⁶ I further find:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. A question affecting commerce exists concerning the representation of certain employees of the Employer/Petitioner within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

⁷ The Ford battery plant consists of a main battery manufacturing/fabrication facility and adjacent support building structures.

⁸ Concrete is formed by mixing together aggregate sand and cement powder.

equipment. In addition to the onsite mixing plants, the Employer/Petitioner maintains an onsite fabric-enclosed temporary tent where the mechanics work and a mobile structure construction office, also referred to as a “batch office.” The record is silent as to whom specifically works in and/or out of the construction office.

The Employer/Petitioner posted job openings for the Marshall construction project through Indeed.com, a public internet search engine for job postings, as well as some advertising in the Marshall area. The proposed unit employees, all of whom reside in the Marshall area and were hired between July 31, 2023 and November 4, 2024, were advised at the time of hire as to the temporary nature of the concrete work and construction project.⁹

The Employer/Petitioner’s contract for concrete work is exclusively limited to supplying concrete for foundations and pavement in the construction of the Ford battery plant in Marshall. The concrete part of the project started out in September 2023 with the Employer/Petitioner projected to provide about 389,000 cubic yards of concrete for the project. However, the scope of the project was thereafter streamlined with the projected amount of concrete being provided by the Employer/Petitioner being reduced by more than half to about 150,000 cubic yards. With this reduced amount of concrete being supplied by the Employer/Petitioner, its last concrete pour has been scheduled for April 15. While other construction phases of the BlueOval project, involving performance of work by general contractor Walbridge and other subcontractors, will continue, the Employer/Petitioner’s portion of the project will end by April 15. The Employer/Petitioner is not aware of any opportunities to bid on additional work at the Marshall facility. After April 15, the Employer/Petitioner plans to disassemble its leased equipment for return to its maintenance garage for rehabilitation for future projects.¹⁰ There is no record evidence that the Employer/Petitioner has currently notified the petitioned-for employees that they will be terminated upon completion of the concrete work on or by April 15.

Prior to working on the BlueOval project, the Employer/Petitioner did not have any presence in Marshall. Besides the BlueOval project, the Employer/Petitioner has not bid on or is aware of any opportunities for any work in the Marshall and surrounding areas of Jackson, Albion, Kalamazoo, or Battle Creek. The record further indicates that, as of the time of the hearing in this matter, the Employer/Petitioner had no other ongoing or prospective jobs anywhere besides the Marshall BlueOval project.

II. ANALYSIS

A. Board Law

⁹ The record also indicates that the Employer/Petitioner informed the Union sometime in 2024 that its concrete work in Marshall was a “one-and-done project.”

¹⁰ While the record is silent as to the location of the Employer/Petitioner’s maintenance garage, the Employer/Petitioner does not own any property or conduct any business in Marshall or its surrounding areas of Jackson, Albion, Kalamazoo, or Battle Creek. The Employer/Petitioner’s Statement of Position (Board Exhibit 3) lists a Warren, Michigan address for the Employer/Petitioner, which according to googlemaps.com, is approximately 125 miles from the Marshall construction site.

The Board will not direct an election where a permanent closure of business operations is imminent and certain. See, *Davey McKee Corp.*, 308 NLRB 839 (1992); *Hughes Aircraft Company*, 308 NLRB 82, 83 (1992). However, the Board “will not dismiss an election petition based on conjecture or uncertainty concerning an employer's future operations, an employer’s contention that it intends to cease operations or reduce its workload sometime in the future, or evidence of cessation that is conditional or tentative.” *Retro Environmental, Inc./Green Jobworks, LLC*, 364 NLRB No. 70, slip op. at 6 (2016), citing *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976). Such speculative assertions concerning the uncertainty of future operations are not sufficient to warrant dismissing the petition and withholding from employees their statutory right to choose or reject union representation. *Hazard Express, Inc.*, 324 NLRB 989, 990 (1997).

The burden of proving that cessation is imminent and definite is on the party asserting an imminent cessation of operations and requires concrete evidence, such as an announcement of business closure and/or termination of employees. *Retro Environmental, Inc./Green Jobworks, LLC*, 364 NLRB at 6; see also *Canterbury of Puerto Rico, Inc.*, 225 NLRB at 309. Factors considered include the period of time between the representation hearing and the expected date of cessation, steps taken by the employer to effectuate the change, and whether the employees have been notified. *Hughes Aircraft Co.*, 308 NLRB at 83; *Davey McKee Corp.*, 308 NLRB at 840; *Larson Plywood Co.*, 223 NLRB 1161 (1976).

The Board has held that where an employer’s operations are scheduled to terminate within three to four months, no useful purpose is served by directing an election. *Davey McKee Corp.*, 308 NLRB at 840; see also *Martin Marietta Aluminum*, 214 NLRB 646 (1974) (approximately four-and-a-half months after representation petition filed); *M.B. Kahn Construction Co.*, 210 NLRB 1050 (1974) (three months until significant reduction in force and six months until complete cessation); *General Motors Corp. (GMC Truck & Coach Division)*, 88 NLRB 119 (1950) (two to four months until cessation). In *Hughes Aircraft Co.*, *supra*, the subcontracting and elimination of unit work within 90 days was found to be definite and imminent based upon evidence of the employer’s solicitation of bids, meetings with and execution of agreements with subcontractors, and notification to employees of the timeframe of their anticipated layoff. In *Larson Plywood Co.*, *supra*, the record established that the employer intended to liquidate its entire business within 90 days, and thus the cessation was found to be both imminent and definite. In contrast, in *Norfolk Maintenance Corp.*, 310 NLRB 527 (1993), the Board ordered an election where the employer was not expected to cease operations in the petitioned-for unit for at least seven months after the Decision and Direction of Election issued.

B. Application of Board Law

The Union’s primary argument is that the Employer/Petitioner’s asserted April 15 cessation-of-operations date is speculative such that the Union, in the event the petitioned-for employees choose to be represented, should be afforded the right to engage in effects bargaining on behalf of these employees. However, the record evidence demonstrates that with the streamlining of its portion of BlueOval project in Marshall, the Employer/Petitioner’s last concrete pour has been scheduled for no later than April 15. Although the record is absent of evidence that the petitioned-for employees have been formally notified of their impending

terminations, the employees, all of whom were recruited from the Marshall area, were advised at the time of hire regarding the limited and temporary nature of the concrete work being performed by the Employer/Petitioner at the BlueOval project in Marshall. The Employer/Petitioner further advised the Union in 2024, that its concrete part of the project was of a “one-and-done” nature with no future expectation of additional work for the Marshall employees. Notably in this regard, prior to working on the BlueOval project in Marshall, the Employer/Petitioner did not have any presence in Marshall and besides the BlueOval project, it has not bid on nor is aware of any opportunities for any work in the Marshall and surrounding areas of Jackson, Albion, Kalamazoo, or Battle Creek. Moreover, as of the time of the hearing in this matter, the record indicates that Employer/Petitioner had no other ongoing or prospective jobs anywhere besides the Marshall BlueOval project. Here, the Employer/Petitioner has established that its operations on the BlueOval project in Marshall are scheduled to completely terminate by April 15, about four months from the filing of the Employer/Petitioner’s petition, and that the petitioned-for employees will be terminated without any expectancy of employment by the Employer/Petitioner in the near future.

Based on the above, I find that the Employer/Petitioner has met its burden to show that its cessation of operations at the BlueOval project at the Marshall facility is both imminent and definite. Consequently, I find that directing an election in this case would serve no purpose. Thus, it is hereby ordered that the petition in this matter is dismissed.¹¹

III. CONCLUSION AND ORDER

It is hereby ordered that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board’s Rules and Regulations you may obtain a request for review of this Decision by filing a request with Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations.

Pursuant to Section 102.5(c) of the Board’s Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency’s web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

¹¹ To ensure the employees’ statutory right to an election, if there is new evidence indicating that the Employer/Petitioner has not ceased operations consistent with evidence it submitted at the hearing, I will entertain a motion by the Union to reinstate the petition. See *Davey McKee Corp.*, 308 NLRB at 840; *Cal-Neva Lodge*, 235 NLRB 1167, 1167 (1978).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on February 27, 2025**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on February 27, 2025**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated at Detroit, Michigan this 12th day of February 2025.



Elizabeth Kerwin, Regional Director
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