

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

AMERICAN ROCK PRODUCTS, INC.

Employer

and

Case 19-RC-364040

**TEAMSTERS LOCAL UNION NO. 760, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS**

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Stipulated Election Agreement, an election was conducted on May 16, 2025, in the following unit, All full-time & part-time, Drivers, Loaders, Batch Plant Workers, and Mechanics employed by the Employer and working at or out of its facility located in East Wenatchee. The tally of ballots showed that of the approximately 17 eligible voters, 9 cast ballots for Petitioner, and 7 cast ballots against representation. There was one challenged ballot. Therefore, Petitioner received a majority of the votes.

The Employer timely filed one objection. On Friday, August 29, 2025, the Hearing Officer issued a report in which she recommended overruling the objection in its entirety. The Employer filed exceptions to the Hearing Officer's recommendation.

The Hearing Officer's rulings made at the hearing are free from prejudicial errors and are hereby affirmed. I have considered the evidence and the arguments presented by the parties and as discussed below, I agree with the Hearing Officer that the Employer's objection should be overruled. Accordingly, I am issuing a Certification of Representative.

THE OBJECTION

The Employer asserts that a pro-union supervisor, Steven Wagg, served as the Union's observer during the representation election held on May 16, 2025, which violated the Act and improperly affected the results of the election. The Hearing Officer determined Wagg was not a statutory supervisor. The Employer filed fourteen exceptions¹ to the Hearing Officer's Report.

For the reasons set forth in the Hearing Officer's Report, I agree with her recommendation to overrule this objection. Although the Employer has excepted to some of the Hearing Officer's credibility resolutions, the Board's established policy is not to overrule a Hearing Officer's

¹ The Employer's exceptions include two Exceptions No. 8.

credibility resolutions unless the clear preponderance of all the relevant evidence convinces the reviewer that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). I have carefully examined the record and find no basis for reversing the findings.

A. Exception 2

The Employer filed an exception that the Hearing Officer failed to resolve or explain the credibility of witnesses testifying at the hearing, and so, any credibility determinations are not supported by the evidence.

The Employer asserts that the Hearing Officer erred in concluding that “there was no evidence, either testimonial or documentary, showing” Mr. Wagg was held accountable for his subordinates’ action. The Employer argues that the presumed error is based on the “Hearing Officer’s failure to credit Mr. Johnson’s testimony that, if there were circumstance where higher levels of skill were needed, the batch plant supervisor would be responsible “for sending somebody that wasn’t fit for ... task.” The Employer’s argument is misplaced. The testimony alluded to does not establish that Mr. Wagg in was in fact held accountable for his subordinates’ action. Moreover, it is at best self-serving and, as found by the Hearing Officer, unsupported by documentary evidence. The Hearing Officer properly noted that she was instructed to resolve the credibility of witnesses and properly provided a summary of the record evidence. Considering this, the exception fails.

B. Exception 3-4

In Exception 3, the Employer takes issue with the Hearing Officer’s Report describing what the Employer alleges to be several instances of undisputed testimony. The Employer argues that by not crediting the challenged testimony as undisputed, the Hearing Officer erred by not characterizing the testimony as established facts. The testimony alluded to by the Employer concerns testimony from an Employer witness that batch plant supervisor Wagg along with the plant maintenance supervisor determine the maintenance needs and that supervisor West did not have the authority to override their decisions. The Employer’s reliance on whether the referenced testimony is undisputed is misplaced. The Hearing Officer specifically found that the maintenance task assignments were routine and did not involve the requisite use of discretion and independent judgement to confer supervisory status. Notably, the Employer does not contest this finding in its brief, and I adopt the Hearing Officer's conclusion.

In Exception 4, The Employer likewise takes issue with the Hearing Officer’s failure to credit testimony as undisputed that batch plant supervisor Wagg is expected to be aware of drivers’ skills and capabilities so he can assign and/or reassign drivers with more skills to more difficult pours. The Employer refers to testimony that Wagg’s familiarity with the steep terrain in the area was a factor utilized in assessing which driver to send to a job based on the driver’s experience and skill set. The Employer relies on testimony from its witness that Wagg could be held responsible for sending a driver to a pour who was not fit for the task. The Employer argues that the Hearing Officer erred in not relying on this undisputed evidence of Wagg’s supervisory authority. The Employer’s characterization of the testimony is at best inaccurate. The Hearing Officer specifically noted that while Wagg would make a recommendation of which driver should handle a more

complex delivery it was ultimately centralized dispatch or Supervisor West's decision whether his recommendation was followed. Moreover, Wagg testified that he really did not know the skills of drivers beyond their years of driving experience. Additionally, Wagg testified that it was Supervisor West, who routinely visited the job sites, observed the drivers delivering concrete, heard customers' requests for drivers, and often had a driver in mind for specific projects. Finally, and like the Exception 3 analysis, the Employer ignores the Hearing Officer's conclusion that the nature of these assignments relying on well-known employee skills do not involve the use of independent judgement.

Additionally, in Exception 4, the Employer argues that the Hearing Officer ignored Board precedent by determining that supervisory authority is determined by an employee's possession of authority, not whether the employee exercised such authority. The objection lacks merit. Exception 4 quotes from the section of the Hearing Officer's Report concerning record evidence regarding driver assignments. In that section, the Hearing Officer pointed out that the record "reveals no examples showing that the batch plant supervisor was held responsible for a driver's delivery." Hearing Officer's Report on an Objection (HOR) at 6. That quotation does not show that the Hearing Officer ignored Board precedent; indeed, that section is merely a recitation of facts. Moreover, it is proper to consider the lack of examples supporting a fact in this context. *Cook Inlet Tug & Barge, Inc. & Inlandboatmens Union of the Pac.*, 362 NLRB 1153, 1153-54 (2015). Thus, this exception lacks merit.

C. Exception 5

The Employer argues that the Hearing Officer disregarded their own finding that "If a driver needs to fill in for a loader operator, the batch plant supervisor will make the decision about which driver would be the best fit for the loader operator position[.]" in determining that Wagg lacked independent judgment in making assignments. The Hearing Officer did not disregard their own finding. Instead, the Hearing Officer analyzed what the evidence revealed about what factors Wagg considered in who would be the "best fit" in assigning work, which is discussed in the main analysis below.

D. Exception 8

The Employer argues that the Hearing Officer erred in determining that the record was devoid of details describing instances where Wagg "assign[ed] a driver to cover for an *absent* loader operator," and what factors were considered in making such assignments. The Employer maintains this finding is contradicted by record evidence. The Employer's argument that the Hearing Officer made the incorrect determination regarding assignments more generally will be considered below.

E. Exceptions 1, 7, 8, 9, 10, 11, 12, 13

The Employer argues the Hearing Officer erred in determining that the Employer failed to prove that Wagg is a supervisor because the evidence demonstrates that Wagg assigned work, responsibly directed employees within the meaning of Section 2(11), and otherwise had secondary indicia supporting supervisory status determination. I dismiss these Exceptions and agree with the

Hearing Officer that Wagg did not assign work nor responsibly direct work within the meaning of Section 2(11) of the Act.

a. Assignment

The Hearing Officer provided an accurate summary of the law regarding supervisory status as it pertains to the primary indicia of assignment. In support of its argument, the Employer emphasizes testimony regarding how the Batch Plant Supervisor would assign tasks to drivers based on certain criteria and would modify the dispatch schedule in certain instances.

As to assigning which dispatches drivers would take, the Employer emphasizes the following testimony. Former Batch Plant Supervisor Steven West testified that, in his capacity as Batch Plant Supervisor, he assigned tasks to the mixers by first considering driver seniority, but also whether a certain driver would be the best fit for a customer's needs based on the driver's experience, preference, or if the driver had prior conflicts with the customer. West testified that, before there was a central dispatch, he would dismiss drivers before the end of day or keep drivers late based on the orders, the present time, and other tasks to be done at the plant. More generally, Former Batch Plant Supervisor West testified he could make changes to the dispatcher's schedule if he thought it was necessary.

General Manager Kelby Johnson testified that, based on his experience and understanding, the Batch Plant Supervisor has the authority to determine who to assign to a specific job based on the employee's experience or skill set, but he couldn't recall any examples where that occurred under Wagg's tenure. General Manager Johnson opined more generally that the Batch Plant Supervisor may send out a driver who is better at dealing with rugged terrain to a route that has lots of hills and mountains.

In contrast, Batch Plant Supervisor Wagg testified that his understanding of a driver's skills is largely based on their years of experience, but it is also informed by customer feedback.² When pressed again, Batch Plant Supervisor Wagg testified that "kind of how it works" is just "this guy's been doing it longer, so he must be better[.]"

In finding that Wagg did not utilize independent discretion to assign drivers based on well-known employee skills the Hearing Officer did not, as the Employer argues, ignore evidence that Wagg considers the driver's years of experience and input from Supervisor West in making those decisions. Rather, the Hearing Officer determined that utilizing well-known employee skills to make such an assignment does not involve independent judgment in the statutory sense. This determination is well founded based on Board precedent. *KGW-TV*, 329 NLRB 378, 382 (1999) ("Assignments based on assessment of employees' skills when the differences in skills are well-known have been found routine."); *Cook Inlet*, 362 NLRB at 1154 (basing an assignment on employee's capability to perform the task does not involve independent judgment); *Golden Crest Healthcare Center*, 348 NLRB 727, 730 fn. 10 (2006)

² The Employer argues that the Hearing Officer erred in not discrediting Wagg's testimony. A clear preponderance of the evidence does not convince me that the Hearing Officer should have discredited Wagg's testimony.

(authority to verify or initial employee time cards does not involve independent discretion, but is routine and clerical).

As to modifying the dispatch schedule, the Employer emphasized the following testimony. General Manager Johnson testified that the Batch Plant Supervisor could determine when to send out drivers. General Manager Johnson testified that the Batch Plant Supervisor could do that if it appeared that the travel time was incorrect, if an employee called out, or if a customer requested it. Relatedly, Batch Plant Supervisor Wagg testified he occasionally had the ability to make schedule adjustments. Wagg specified that because he arrives before dispatch in the morning, and if an issue comes up before dispatch arrives, like a driver's truck wouldn't work, or has some other delay, he could change their departure time.

The Hearing Officer determined that Wagg's modification of the dispatch schedule did not constitute assigning work in the statutory sense because such changes were often triggered by absences, late arrivals, or the request of a driver for an early departure requiring reshuffling of drivers. The Employer provides a conclusory assertion that this reasoning is erroneous. Modifying a schedule if dispatch is not yet in or because an employee is absent or delayed, to either delay that employee's start on the schedule or to assign an employee who is capable of doing the job, which appears to largely be based on the employee's seniority, does not involve the use of independent discretion.

The Employer also cites the following example as evidence of Wagg assigning work. In a message thread between Batch Plant Supervisor Wagg and Dispatcher Kasondra Richman about an employee calling out, Wagg stated, "going forward let's plan to schedule all drivers 5 minutes apart on big pours." General Manager Johnson testified that this means Wagg wanted the drivers to be brought in closer time intervals. General Manager Johnson opined that before making such a statement, Wagg would have had to consider the needs of the customer and their capabilities because if you send drivers to a customer in intervals that short, some customers couldn't handle it, and it would create issues at the job site. But Johnson wasn't sure if anybody agreed with Wagg's assessment of five minutes apart on big pours. Relatedly, Former Batch Plant Supervisor West testified that someone in his old position might move big pours to five minutes apart based on customer ability to process. But Batch Plant Supervisor Wagg testified that his recommendation was not followed. Accordingly, this incident is not particularly probative of Wagg's authority to assign work as this example appears to be one where the Employer did not follow Wagg's recommendation. And the Employer did not point to evidence demonstrating that this recommendation was followed.

Accordingly, I adopt the Hearing Officer's determination that Wagg did not assign work within the meaning of Section 2(11) of the Act.

b. Responsibly Direct

The Employer argues that, based on the evidence adduced at hearing, Wagg responsibly directed employees within the meaning of Section 2(11). The Employer's argument fails.

“[F]or direction to be ‘responsible,’ the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” *In Re Oakwood Healthcare, Inc.*, 348 NLRB 686, 691–92 (2006). To that end, to establish accountability, the party asserting supervisory status must show the putative supervisor has “the authority to direct the work and the authority to take corrective action, if necessary.” *Id.*

General Manager Johnson testified that if the Batch Plant Supervisor assigned a driver who had an insufficient level of experience and skills to handle a job, like unfamiliarity with the terrain or the soil, and an incident occurs, the Batch Plant Supervisor could be held responsible by the Employer. The Employer argues that the Hearing Officer improperly failed to credit this testimony, and thus, she erred in determining that the Batch Plant Supervisor could not responsibly direct work.

The Hearing Officer reasoned that Wagg did not responsibly direct employees because there was no record evidence (1) of Wagg being responsible for directing unit employees, (2) of Wagg being held accountable for the performance of tasks carried out by drivers, the loader operator, or maintenance employees; and (3) of evaluations or discipline from Wagg at any level. In reasoning as such, the Hearing Officer did appear to discount General Manager Johnson’s generalized testimony about Wagg hypothetically being held responsible for assigning a driver with insufficient skills to cover a route. I find that the Employer has not shown that the Hearing Officer erred in discounting such generalized testimony, especially given the lack of record evidence cited to support such testimony. Moreover, the Employer does not even mention Wagg’s authority to take corrective action in its argument in support of its exceptions, which would be required under *Oakwood Healthcare*, as discussed above. Accordingly, I find that the Hearing Officer did not err in finding that Batch Plant Supervisor Wagg did not responsibly direct work within the meaning of Section 2(11) of the Act.

c. Secondary Indicia

In Exceptions 6 and 12 the Employer raises issues regarding how the Hearing Officer weighed or credited secondary evidence supervisory indicia of supervisory status. The Hearing Officer determined that because none of the Section 2(11) indicia of supervisory status are present in this matter, the secondary indicia were not material. This conclusion is supported by Board law. *In Re Cent. Plumbing Specialties, Inc.*, 337 NLRB 973, 975 (2002). Accordingly, I find that the Hearing Officer properly found that secondary indicia were not material to her determination in this matter.

CONCLUSION

Based on the above and having carefully reviewed the entire record, the Hearing Officer's report and recommendations, and the exceptions and arguments made by the Employer, I overrule the objection, and I shall certify the Petitioner as the representative of the appropriate bargaining unit.

III. CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for Teamsters Local Union No. 760, affiliated with the International Brotherhood of Teamsters, and that it is the exclusive representative of all the employees in the following bargaining unit:

All full-time & part-time, Drivers, Loaders, Dispatchers, Batch Plant Workers, Mechanics & Quality Assurance employees employed by the Employer and working at its facility located at 5515 Enterprise Drive, East Wenatchee, WA, 98802; excluding all dispatchers and quality control employees not working at the Baker Flats facility located at 5515 Enterprise Drive, East Wenatchee, WA, 98802, all other employees, managers, confidential employees, office clerical employees, professional employees, and guards and supervisors as defined by the Act.

IV. REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **Tuesday, December 9, 2025**. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

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. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. 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.

Dated: November 24, 2025

Ronald K. Hooks

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