UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

SYLVESTER McCLAIN, on His Own Behalf and on Behalf of A Class of Similarly Situated Persons, Et Al.,	§	
	§	
Plaintiffs	§	**Civil Action No. 9:97-CV-063**
	§	
v.	§	**Class Action/Judge Cobb**
	§	
LUFKIN INDUSTRIES,	§	
	§	
Defendant	§	

MOTION TO INTERVENE AND MEMORANDUM BRIEF OF IAM LOCAL 1999, GMP LOCAL 429 AND BOILERMAKERS LOCAL 587

International Association of Machinists & Aerospace Workers, Local Lodge No. 1999, AFL-CIO/CLC, Glass, Molders, Pottery, Plastics & Allied Workers International Union, Local No. 429, AFL-CIO/CLC, and International Association of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local No. 587 AFL-CIO/CLC, file this motion to intervene and memorandum brief, as follows:

Introduction

1. A class of former and present African-American employees ("plaintiffs") of Defendant Lufkin Industries ("Lufkin") has brought this action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., to redress alleged race discrimination with respect to certain employment practices. Movants International Association of Machinists & Aerospace Workers, Local No. 1999, AFL-CIO/CLC ("IAM"), Glass, Molders, Pottery, Plastics & Allied Workers International Union, Local No. 429, AFL-CIO/CLC ("GMP"), and International Association of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local No. 587,

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AFL-CIO/CLC ("Boilermakers"), seek to intervene of right as parties defendant under FED R. CIV. P. 24(a)(2) in order to protect their legal and contractual rights, and the rights of their members, in preserving a collectively bargained seniority system. The IAM, GMP and Boilermakers (collectively "Unions") recently became aware that the Court is considering granting injunctive and equitable remedies to plaintiffs, if liability is established, that would have a substantial adverse impact on the seniority system. The Unions seek to participate in this litigation with full rights as parties at trial and any related proceedings in order to fulfill their legal duty to represent the interests of all members of the bargaining unit, to ensure proper application of the seniority provisions in their collective bargaining agreement with Lufkin, and to address the propriety of retroactive or constructive seniority as a remedy.

2. This is a non jury case and trial is set to commence on December 4, 2003. Intervention should not result in any delay of trial since the Unions do not seek to conduct any discovery and since they are ready, willing and able to participate at trial and related proceedings. The Unions request a total of ten hours at the liability stage of trial to present evidence and conduct cross-examination of witnesses, but they will appear for all proceedings through their attorneys.

3. The Unions' attorneys have conferred with class counsel and Lufkin's counsel concerning this motion. Lufkin does not oppose the motion. Plaintiffs oppose the motion.

4. The Unions present their pleading in intervention to the Court with this motion pursuant to FED. R. CIV. P. 24(c). (Exhibit 1, Appendix pp. 1 - 13).

Grounds of Motion

5. The Unions, as bargaining representatives of Lufkin's hourly-rated employees, have an interest in the subject matter of this class action and disposition of the action might impair their

ability to protect this interest since the extant parties do not adequately represent the Unions' rights. This motion is brought in a timely manner. Accordingly, the Unions are entitled to intervene of right pursuant to Rule 24(a)(2).

Jurisdiction

6. The Unions need not assert or demonstrate any independent ground of jurisdiction since they are seeking intervention as of right. See *Acuff v. United Papermakers and Paperworkers, AFL-CIO*, 404 F.2d 169, 171 n.2 (5th Cir. 1968), *cert. denied*, 394 U.S. 987 (1969).

Relevant Procedural History

7. The representative plaintiffs filed their original complaint against Lufkin on February 26, 1997 and their most recent amended complaint on March 28, 2003. The Court certified this action as a disparate impact class action pursuant to Rule 23, Federal Rules of Civil Procedure, on March 31, 1999. The class certified is defined as:

> All Black persons employed for any period of time by defendant Lufkin Industries on or after March 6, 1994 to date whose compensation, remuneration, benefits, job assignments, promotional opportunities, career advancement and other terms and conditions of employment have been, may have been, or may become, adversely affected by defendant Lufkin Industries' past or present systems of administering hiring, wages, salaries, job assignments, training, evaluations, promotions, demotions, terminations, layoffs, recalls and rehires.

By letter dated March 31, 2003, the Court advised the parties' counsel that if liability is established, then the Court may grant injunctive and equitable relief that would have an adverse impact on the seniority system. (Exhibit 3, App. pp.16 - 18) In that correspondence the Court expressed concern about the non transferability of seniority of represented employees between the various divisions of Lufkin and inquired whether the Court can reform the departmental seniority provisions of the CBA. Teresa Demchak, Darci Burrell and Tim Garrigan, class counsel, presented plaintiffs' reply by letter to the Court dated April 11, 2003. (Exhibit 4, App. pp. 19 - 33). Class counsel advised the Court that reformation of the CBA would not be appropriate in this case since the seniority system is bona fide and that plaintiffs are not seeking reformation of the departmental seniority provisions as a remedy. In seeming contradiction class counsel asserted that the Court has the power to award retroactive or constructive seniority to individual class members for promotion purposes at the remedy stage of trial and that such a remedy would be appropriate.

Salient Facts

8. Lufkin is headquartered in Lufkin, Angelina County, Texas. Lufkin designs, manufactures and markets products and services to energy, industrial and transportation markets from four divisions: Oilfield, Power Transmission, Foundry and Trailer.

9. The Oilfield Division designs, manufactures and markets the industry standard, conventional Mark II and other rod lift pumping units that are used to lift oil from wells, provides pumping unit services (used unit refurbishment and sale, installation, field service, repair, and parts) and well automation products and services, through the Lufkin Automation Division (pump-off controllers, dynamometers, fluid level analysis, consulting and training) that lower the costs of producing oil.

10. The Power Transmission Division makes gears in sizes up to 192 inches in diameter, ranging from 300 pounds to 250 tons for various industrial applications. This division also provides comprehensive service for its customers.

11. The Foundry Division designs and manufactures engineered castings for customers in machine tool, valve, construction equipment and other industrial markets.

12. The Trailer Division designs and manufactures van, platform and dump trailers for the trucking segment of the transportation industry. Branches throughout the southern United States ensure customers' access to parts and repair services.

13. The American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO") has been certified as the bargaining representative of Lufkin's hourly-rated employees in Angelina County since 1951. The IAM, GMP and Boilermakers, as affiliates of the AFL-CIO, represent all unit employees on a day-to-day basis. The IAM represents 337 employees in Lufkin's Power Transmission and Oilfield Divisions. The GMP represents 258 employees in Lufkin's Foundry Division. The Boilermakers represent 262 employees in the company's Trailer and Oilfield Divisions.

14. Each local union appoints its respective business committeemen, shop stewards and auditors. Class Representatives Sylvester McClain, Walter Butler and Leroy Garner have all served as shop stewards or committeemen. Currently there are fourteen African-American shop stewards among the three labor organizations.

15. Lufkin and the Unions negotiate a single collective bargaining agreement ("CBA") that governs wages, hours, seniority and other working conditions of all unit employees. At trial plaintiffs will introduce in evidence the initial CBA and all subsequent agreements covering the period for class certification with the possible exception of the most current CBA.

16. The CBA expressly requires that there be equal employment opportunity for all employees, and provides that Lufkin and the Unions will comply with all state and federal laws pertaining to non discrimination so as to protect the rights and opportunities of all persons to seek, obtain and hold employment without discrimination on account of race or any other prohibited factor

(CBA, Art. 1, Sec. 2).

17. If a unit employee believes that he/she has been treated unfairly or contrary to the CBA regarding an ability rating, job assignment, seniority rating, promotion or pay raise, the grievance process is available to address and remedy the employee's complaint.

18. The Unions maintain grievance files with respect to written grievances. At all relevant times the Unions processed grievances as needed. African-American employees used the grievance process, and the Unions reviewed promotions and other employment decisions affecting unit employees to ensure that the decisions complied with the CBA. The Unions continue to process written grievances for all employees who complain about a failure to receive a promotion or other employment decision.

19. The CBA objectively defines promotion rights of unit employees. With the exception of entry level jobs, certain highly skilled positions or as otherwise excepted in the CBA, whenever there is a job or vacancy to be filled in the bargaining unit, Lufkin posts the job and the contractual job bid and posting procedures allow employees to bid on the position. Any unit employee's failure to receive a promotion to a posted or non posted unit position is subject to the CBA's grievance and arbitration procedure.

20. The procedure for awarding posted promotions is well defined. Lufkin posts vacant positions according to the procedures established in the CBA. Any unit employee may sign a job posting.

21. Between 1994 and March 2003 there were 1,519 selections for posted hourly jobs according to the actual bid sheets that Lufkin has maintained. A total of 335 African-American employees were selected for these jobs.

22. Union officials have never discouraged African-American employees from signing

posted job bid sheets on the basis of their race or any other basis. The Unions' experience has been that class members consistently signed posted bid sheets and received job promotions.

23. The primary criterion for promotion is departmental seniority. The vast majority of promotions within the bargaining unit are awarded on the basis of departmental seniority alone. Promotions are granted to eligible bidders from the job bid list based on departmental seniority pursuant to Article 22 of the CBA at the end of the posting period. Departmental seniority within the bargaining unit governs promotions or demotions within a department, and in a reduction of force within the several departments. When work forces are increased, Lufkin recalls employees whom have been laid off in a particular department in the inverse order of their layoff, provided that such employees shall have departmental seniority status in accordance with the provisions of Article 22; and provided further that in the case of promotions, demotions, transfers, layoffs and recalls of laid off employees, their departmental seniority shall govern if their ability to perform the work is approximately equal.

24. The CBA defines "ability" as an employee's capacity to perform the work to which he/she is assigned, with efficiency equal to that of other employees under consideration, and with the same or equivalent tools and equipment which at the time are customarily available to such work.

25. Employees promoted to a job in a higher classification are given a ten day trial under normal supervision in order to demonstrate their ability to perform the work of the job. (CBA, Art. 25, Sec.2). Employees who fail to qualify after being given a trial may return to their former job with seniority unimpaired. By the same token, employees who so desire have ten days to return to their previous positions after they have been promoted to a new job even if they qualify to perform the new job.

26. A limited number of positions are not posted. Non posted positions consist of (1) entry level jobs and (2) jobs associated with a recognized career path or line of progression agreed to by Lufkin and the Unions. Non posted positions are subject to the CBA's grievance and arbitration procedures.

Argument and Authorities

Federal courts should allow intervention as of right when no one would be prejudiced and the greater justice could be obtained. *Heaton v. Monogram Credit Card Bank*, 297 F.3d 416, 422 (5th Cir. 2002); *John Doe No. 1 v. Glickman*, 256 F.3d 371, 375 (5th Cir. 2001). It is well established that intervention is proper in a Title VII action where a labor organization's ability to protect the integrity of a collective bargaining agreement could be affected by either a litigated judgment or consent decree. See, e.g., *Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996) (determining that a union's interest in preserving its members' rights in promotional system challenged as discriminatory in a Title VII class action justified intervention); *Stallworth v. Monsanto Co.*, 558 F.2d 257, 269 (5th Cir. 1977) (reasoning that intervention was appropriate where applicant's interest was analogous to that of a labor union protecting a seniority system in a Title VII action); *EEOC v. AT&T Co.*, 506 F.2d 735 (3rd Cir. 1974) (holding in Title VII class action that intervention by union to assert interest in preserving collective bargaining agreement was proper); *Wilson v. Southwest Airlines Co.*, 98 F.R.D. 725 (N.D. Tex. 1983) (allowing intervention by union to preserve collectively bargained seniority provisions); *CBS, Inc. v. Snyder*, 789 F. Supp. 1019, 1022-23 (S.D.N.Y. 1992) (allowing union to intervene to protect interest in collective bargaining agreement). For reasons which follow, the Unions in this case are entitled to intervene as of right.

I. Intervention Standards in Title VII Actions

Martin v. Wilks, 490 U.S. 755, 109 S. Ct. 2180, 104 L. Ed. 2d 835 (1989) addressed finality of judgments and consent decrees in Title VII actions. In *Wilks*, the U.S. Supreme Court repudiated the impermissible collateral attack doctrine and rejected an argument that several Caucasian firefighters – whose rights were affected by two consent decrees to which they were not parties that redressed racially discriminatory employment practices by the City of Birmingham, Alabama against African-American firefighters – had a duty to attempt to intervene in the original Title VII action, reasoning that the burden to join all persons who might be affected by a decree under Rule 19's mandatory joinder provisions should be placed on the parties.

Congress responded to *Wilks* by enacting Section 108 of the Civil Rights Act of 1991 (42 U.S.C. § 2000e-2(n)), a special remedial scheme that is intended to balance the rights of non parties against the need for finality of judgments and prompt relief for discrimination. Section 2000e-2(n) provides in relevant part:

> (1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).
> (B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws - -
>
> > (i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had - -
> > (I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and
> > (II) a reasonable opportunity to present objections to such judgment or order. . .

II. Intervention of Right Under Rule 24(a)(2)

Edwards addressed the effect of 42 U.S.C. § 2000e-2(n) on a non party's ability to intervene. The Fifth Circuit concluded, based on the plain language of the statute, that a non party's motion to intervene in Title VII cases must be adjudicated in accordance with the standards established under Rule 24 for such motions in general. The standard of appellate review is de novo. 78 F.3d at 995-998. See also *Ozee v. American Council on Gift Annuities*, 110 F.3d 1082 (5th Cir.), *vacated on other grounds sub nom., American Bible Soc'y v. Richie*, 522 U.S. 1011 (1997).

Rule 24(a)(2) provides that upon application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. In determining the Unions' motion to intervene of right pursuant to Rule 24(a)(2) in this case, the Court should consider whether they (1) filed a timely application, (2) claim an interest in the subject matter of the action, (3) show that disposition of the action might impair or impede their ability to protect that interest, and (4) their interest is not adequately represented by extant parties to the litigation. *Edwards*, 78 F.3d at 999. See also *Sierra Club v. Espy*, 18 F.3d 1202 (5th Cir. 1994); *Kneeland v. NCAA*, 806 F.2d 1285, 1287 (5th Cir.), *cert. denied*, 484 U.S. 817 (1987).

A. Timeliness

There is no absolute measure of timeliness with respect to intervention. *Stallworth*, 558 F. 2d at 264-66; *Espy*, 18 F.3d at 1205. Instead, the Court must determine timeliness from all the circumstances. *NAACP v. New York*, 413 U.S. 345, 366, 93 S. Ct. 2591, 2603, 37 L. Ed. 2d. 648 (1973); *Corley v. Jackson Police Dep't,* 755 F.2d 1207, 1209 (5th Cir. 1985).

In *Stallworth*, the Fifth Circuit established four factors that a district court should consider when evaluating the timeliness of a motion to intervene. 558 F.2d at 264-66. The first factor is the length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene. The second factor is the extent of prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case. The third factor is the extent of prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied. The fourth factor is the existence of unusual circumstances militating either for or against a timeliness determination.

The first factor focuses on the time lapse between the applicant's receipt of actual or constructive knowledge of his interest in the litigation and the filing of his motion for intervention. The relevant period commences either from the time the applicant knew or reasonably should have known of his interest, or from the time the applicant became aware that his interest would no longer be protected by the existing parties to the lawsuit. Id. at 264 (quoting *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394, 97 S. Ct. 2464, 2469-70, 53 L. Ed. 2d 423 (1977)).

This case has been pending since February 1997. However, the Court conducted all class certification proceedings in the Unions' absence, and never issued any official notice to the Unions of the proceedings, despite plaintiffs' presentation of argument and evidence in the class certification hearing relating to the seniority provisions of the CBA and the Unions' administration of the grievance procedure under the CBA. The Unions' officials were unaware of the class certification proceedings until after the Court entered the class certification order. As a result, the Unions had no meaningful opportunity to seek intervention to be heard on any matters relating to the CBA in that proceeding.

Further, neither plaintiffs nor Lufkin have sought to join the Unions as parties under Rule 19 and no party has asserted any claims against the Unions. Plaintiffs have conceded that Lufkin and the Unions did not implement the seniority system with an intent to discriminate, that the system is bona fide, and that the Unions have adequately represented African-American unit employees, as a class, in employment disputes and all other issues covered by the CBA. Under these circumstances there was no reason for the Unions to believe that their interests may be affected by this litigation until the Court's correspondence to counsel concerning remedy issues on March 31, 2003 and class counsels' reply dated April 11, 2003.[1]

The Unions' brief delay in filing the motion to intervene is reasonable in light of Fifth Circuit precedent. See *Espy,* 18 F.3d 1202 (5th Cir. 1994) (motion found timely when made within two months of applicant becoming aware that interests were affected); *Association of Prof'l Flight Attendants v. Gibbs*, 804 F.2d 318 (5th Cir. 1986) (five month lapse found not unreasonable). Additionally, the filing of the motion prior to entry of judgment favors timeliness since most Fifth Circuit decisions rejecting motions for intervention as untimely concern post judgment motions. See *Engra, Inc. v. Gabel*, 958 F.2d 643 (5th Cir. 1992); *Jones v. Caddo Parish Sch. Bd.*, 735 F.2d 923 (5th Cir. 1984); *Smith v. Missouri Pac. R.R. Co.,* 615 F.2d 683 (5th Cir. 1980); *Hefner v. New Orleans Pub. Serv., Inc.*, 605 F.2d 893 (5th Cir. 1979), *cert. denied*, 445 U.S. 955 (1980); *United States v. Marion County School Dist.*, 590 F.2d 146 (5th Cir. 1979); *United States v. Allegheny-Ludlum Indus., Inc.*, 553 F.2d 451 (5th Cir. 1977), *cert. denied*, 435 U.S. 914 (1978).

The second *Stallworth* factor focuses on whether any prejudice to the existing parties would result by reason of the Unions' failure to seek intervention as soon as possible after learning of their

[1] Both class counsel and defense counsel provided the Unions' attorneys with a copy of the correspondence in April 2003.

interest in the case. This factor is concerned only with the prejudice caused by the delay in filing the motion, not any alleged prejudice which may result if intervention is granted. 558 F.2d at 265. In this case, no party will suffer any prejudice as a result of the Unions' reasonable delay in filing the motion to intervene. The Unions do not seek to conduct any discovery or take any other action that could delay trial, and all Unions are ready to participate when trial commences on December 4, 2003.

The third factor focuses on whether the Unions would be prejudiced if their motion is overruled. Any argument that the Unions would suffer no prejudice if intervention is denied would have no basis in law, policy or logic. Under federal law the Unions have a legal duty to represent the interests of all unit employees. *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 111 S. Ct. 1127, 113 L. Ed. 2d 51 (1991); *Vaca v. Sipes*, 386 U.S. 171, 87 S. Ct. 903, 17 L. Ed. 2d 842 (1967). The legal rights associated with formal intervention – including presentation of briefs on remedy issues, presentation of evidence, and an ability to appeal – are critically important in this analysis. See *Espy*, 18 F.3d at 1207. Most importantly, absent intervention the Unions would have no opportunity to establish a factual basis for any challenges to the remedial provisions of a litigated judgment or consent decree. See id.

The fourth *Stallworth* factor concerns special circumstances that militate either for or against timeliness of the Unions' motion. There are no special circumstances militating against timeliness. There is, however, a special circumstance that militates in favor of timeliness. The parties were involved in extensive mediation proceedings for approximately three years before that settlement process obviously failed. The Unions had a reasonable expectation that the parties would negotiate a resolution of the dispute (subject to the Court's approval) until September 22, 2003, when defense counsel informed a Union attorney that mediation had failed.[2]

B. Unions' Interest in Subject Matter of Action

It cannot be disputed that the Unions have a cognizable interest in the subject matter of this class action. The Unions operate as the collective bargaining representative for 857 employees at Lufkin including numerous class members. In that capacity the Unions have a legally protectable interest in participating in any legal proceeding which may affect the interpretation and/or enforceability of the seniority provisions of the CBA. See *Edwards,* 78 F. 3d at 999 (Fifth Circuit held that a union's interest in preserving its members' rights in promotional system challenged as discriminatory in a Title VII class action justified intervention); *AT&T*, 506 F.2d at 741-42 (union should be permitted to intervene as party defendant to protect its interest in its collective bargaining agreements with AT&T); *Southwest Airlines,* 98 F.R.D. at 733 (allowing union's intervention to preserve collectively bargained seniority provisions); *Vulcan Society of Westchester County,* 79 F.R.D. at 439-41 (unions permitted to intervene to protect their collective bargaining agreements and assure adequate hiring and promotion criteria).

C. Impairment of Unions' Interest

The Unions' interest in administering and enforcing the CBA that they negotiated with Lufkin may be impaired by any finding of liability against the employer. The Court has expressed an interest in reformation of the CBA's departmental seniority provisions, and plaintiffs are seeking an award of retroactive or constructive seniority for numerous individual class members for promotion purposes. Such remedies would essentially abrogate the contractual rights of many

[2] The Unions participated in two confidential mediation sessions that the parties conducted on April 11, 2002 and May 20-22, 2002. However, the Unions were not aware that plaintiffs intended to seek any remedies affecting the CBA until class counsels' letter to the Court dated April 11, 2003.

represented employees whom are not class members and would have a severe impact on the Unions' representational and contractual rights. See *CBS*, 798 F. Supp. at 1023.

D. Inadequate Representation by Existing Parties

Finally, the Unions' interests and rights in this case are not adequately represented by the extant parties. The Unions' burden of making that showing "should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10, 92 S. Ct. 630, 30 L. Ed. 2d 686 (1972). No party has the ability or motivation necessary to represent the Unions' broad institutional interests as exclusive collective bargaining representatives responsible for administering the CBA on behalf of 857 employees. Plaintiffs' interests have become adverse to the Unions' interests by reason of the remedies that plaintiffs now seek. The bargaining relationship between Lufkin and the Unions is adversarial, and their interests and objectives are often divergent as evidenced by the Unions' strike against Lufkin when the previous CBA expired in October 2002. Moreover, federal law prohibits Lufkin from providing legal services for the Unions' benefit. See 29 U.S.C. § 186. Unless the Court permits the Unions to intervene, their interest in ensuring that the CBA is interpreted correctly and in representing the rights of all unit employees will be undermined. See and cf. *AT&T*, 506 F. 2d at 741-42; *CBS*, 798 F. Supp. at 1023-24.

Conclusion

For these reasons, IAM, GMP and Boilermakers request that the Court grant the motion to intervene of right in all respects and permit the Unions to appear and participate fully at trial and all other proceedings as parties defendant.

Dated October 31, 2003.

Respectfully submitted,

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[Signed by Rod Tanner w/ permission]

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Certificate of Conference

By letter dated October 24, 2003, the undersigned counsel faxed a letter to all counsel of record for conferral purposes. The letter advised the parties' counsel of the Unions' decision to file a motion to intervene and stated the grounds of the motion. On October 28, 2003, the undersigned counsel conferred by telephone with Doug Hamel, defendant's lead counsel, regarding the Unions' motion to intervene pursuant to Local Rule 7.1(b). Mr. Hamel advised the undersigned that defendant does not oppose the motion. On October 27, 2003, the undersigned counsel conferred by telephone with Tim Garrigan, one of class counsel, regarding the foregoing motion to intervene pursuant to Local Rule 7.1(b). Mr. Garrigan advised the undersigned that plaintiffs oppose the motion. Accordingly, the contested motion is submitted to the Court for determination.

Rod Tanner
Attorney for IAM Local 1999

Certificate of Service

The undersigned attorney certifies that a true and correct copy of the *Motion to Intervene and Memorandum Brief of IAM Local 1999, GMP Local 429 and Boilermakers Local 587* was served on all counsel of record by U.S. Mail this 31st day of October 2003 as follows:

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

SYLVESTER McCLAIN, on His Own Behalf and on Behalf of A Class of Similarly Situated Persons, Et Al.,	§	
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Plaintiffs	§	**Civil Action No. 9:97-CV-063**
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	§	
LUFKIN INDUSTRIES,	§	
	§	
Defendant	§	

ORDER GRANTING UNIONS' MOTION TO INTERVENE

Upon consideration of the motion to intervene brought by IAM Local 1999, GMP Local 429 and Boilermakers Local 587 pursuant to FED. R. CIV. P. 24(a)(2), and the parties' responses, the Court finds that the motion should be, and it is hereby, granted. Accordingly, intervenors shall participate in this class action with full rights as parties at trial and all other proceedings.

It is so Ordered this ____day of ______________, 2003.

____
U.S. District Judge Howell Cobb