

**Overnite Transportation Company and Teamsters
Local Union No. 375, Petitioner. Case 3-RC-
10453**

October 4, 1996

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

On September 11, 1996, the Regional Director for Region 3 issued a Decision and Direction of Election in which she found that there was a sufficient community of interest between mechanics and the petitioned-for unit of drivers and dock workers at the Employer's Tonawanda, New York terminal to require the mechanics be included in the petitioned-for unit.¹ Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Petitioner filed a timely Request for Review of the Regional Director's decision to exclude the mechanics. The Employer filed an Opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board grants the Petitioner's request for review as it raises substantial issues warranting review. Based on the Regional Director's undisputed findings, we find, contrary to the Regional Director, that the evidence does not support her finding that mechanics share such a close community of interest as to require their inclusion in the petitioned-for unit.

The Regional Director relied on evidence that the Employer is a highly integrated operation, and that the terminal involved here is small compared to the Employer's other facilities.² The Regional Director further found that some job duties at this terminal are performed by all employees, such as jockeying trailers in and out of the loading dock area, and washing vehicles. She also relied on evidence that all classifications of employees have used certain terminal equipment (forklifts and wash bays); their duties overlap because "at times" employees assist each other in performing their respective duties; and all employees have a high degree of work-related contact. The Regional Director found too that supervision of mechanics is "not entirely separate," and that that all employees receive common benefits, are subject to common work rules, and receive the same periodic wage increases. Further, she found that while wage rates of mechanics are higher than those of dock employees, drivers earn only 4-5 cents per hour less than mechanics.

¹The relevant portions of the Regional Director's decision are attached to this decision.

²Thirty-five employees are in the unit found appropriate, including three mechanics.

The Regional Director, however, made several findings which substantially outweigh the facts cited above and which strongly support exclusion of the mechanics. The Regional Director found that there is "no regular interchange" between the mechanics and the other employees in the unit. She also found that mechanics "must have specialized skills and training" that the drivers and dock employees do not possess. While the Regional Director found supervision of the mechanics is not "entirely" separate, this finding is based on evidence of occasional supervision by substitutes or sporadic supervision by the supervisors of other employees. Further, the Regional Director found that there is "not common supervision in terms of the Employer's organizational structure." Hence, the mechanics' regular supervision is separate from that of the other employees. Mechanics also are provided uniforms free of charge, while dock employees must purchase uniforms. And mechanics work distinct shifts from other employees and are the only employees who are on call over the weekend.

Although the Regional Director relied on the level of integration at this particular facility, her own findings do not support reliance on this factor. While one classification may "at times" act as an "extra set of hands" to assist another classification, the Regional Director found that mechanics "do not load and unload trucks on a regular basis" and "it does not appear that drivers or dock workers actually perform mechanical work." Moreover, the Regional Director found the record "unclear" as to how often this assistance is provided. Apart from jockeying duties, most of the driving of tractors by mechanics appears to be in connection with the emergency repair of disabled vehicles.

Carpenter Trucking, 266 NLRB 907 (1983), and *Queen City Transports*, 141 NLRB 964 (1963), are distinguishable. Unlike this case, mechanics in *Carpenter Trucking* shared supervision with drivers, and drivers assisted mechanics with major mechanical work, and used the mechanics' tools when providing assistance. The mechanics in *Queen City* interchanged and shared common supervision with the drivers, and the union there stated that it would accept any unit deemed appropriate by the Board.

In view of these undisputed facts, we find that the evidence is insufficient to require that the mechanics be included in the petitioned-for unit of drivers and dock employees. See, e.g., *Alterman Transport Lines*, 183 NLRB 18, 24 (1970); *Mc-Mor-Han Trucking*, 166 NLRB 700, 701 (1967), and *Laidlaw Waste Systems v. NLRB*, 934 F.2d 898 (7th Cir. 1991).³ Accordingly, we

³Although our decision is based on the undisputed facts of this particular case, the Board is familiar with the Employer's current terminal operations. In six similar cases the Board denied the Employer's

Continued

reverse the Regional Director's decision and find that the petitioned-for unit of drivers and dock employees excluding mechanics is an appropriate unit, and remand this case to the Regional Director for further appropriate action.

er's requests for review of Regional Directors' findings that inclusion of mechanics is not required in units of drivers and dock employees. See *Overnite Transportation Co.*, 9-RC-16504 and 9-RC-16505 (1996), 8-RC-15191 (1995), 9-RC-16514 (1995), 9-RC-16524 (1995), 10-RC-14592 (1995), and 22-RC-11058 (1995).

APPENDIX

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks a unit of all full-time and regular part-time city and road truckdrivers and dock workers employed by the Employer at its Tonawanda terminal. Petitioner would exclude mechanics, office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

The Employer takes the position that, the appropriate unit is a "wall to wall" unit of all full-time and regular part-time mechanics, city drivers, road drivers, and dock employees, including the dock leadman employed by the Employer at its Tonawanda terminal, but excluding all office clerical employees, sales employees, guards, professional employees, and supervisors as defined in the Act. The Petitioner takes the position that the dock leadman, whose name is Bob Fries, is a statutory supervisor and should therefore be excluded. There are approximately 31 employees in the unit sought by the Petitioner, and approximately 35 employees in the unit proposed by the Employer. There is no history of collective bargaining at the Tonawanda terminal. Thus, the only issues involve the unit placement of approximately three mechanics, and the status of Fries, the dock leadman.

The Employer's approximately 17 city drivers pick up and deliver freight locally, i.e., in the Buffalo area. Approximately six road drivers pick up and deliver at the Employer's service centers (terminals), which are located at various distances from the Tonawanda terminal. The record reveals that road drivers go as far as Pittsburgh and Harrisburg, Pennsylvania, and Columbus, Ohio. Dockworkers load and unload trucks, and move freight across the dock. Dockworkers make use of such equipment as forklifts, pallet jacks, dock carts, and handtrucks. Mechanics (also referred to in the record as "shop employees") maintain and repair the Employer's vehicles and equipment, including tractors, trailers, converter dollies, and forklifts. Mechanics at Tonawanda service and repair equipment from other service centers, as well as their own. When the situation arises, a mechanic may leave the terminal to make repairs on the road, sometimes driving a tractor out to switch for the disabled vehicle. The mechanics are also primarily responsible for terminal maintenance, e.g., building repair, snow removal, groundskeeping, and trash removal.

At times (the record does not reveal how frequently), city drivers come in early to help load or unload trucks, and road drivers may work the dock at a service center for a couple of hours, if time permits. During slack periods, both drivers and dockworkers have helped the mechanics with terminal maintenance (again, the record does not reveal how often this

occurs). Generally, the mechanic on duty brings a tractor or trailer in need of maintenance or repair into the shop, but drivers and dockworkers have also brought vehicles in. Mark Weinstein, the Employer's fleet services manager, is the immediate supervisor of the mechanics. Weinstein testified that drivers and mechanics have daily contact with each other. Drivers are required to complete pretrip and posttrip vehicle condition reports (VCRs) and either give them directly to a mechanic or deposit them in a box in the shop. Where it makes sense to do so, drivers bring problems directly to the mechanics' attention by talking with them, as well as completing the VCR. Mechanics, Weinstein testified, go with drivers to road test vehicles after maintenance or repair.

Drivers and dockworkers bring equipment, e.g., forklifts or converter dollies, to the shop for repair; it is not necessary that they obtain Weinstein's approval or that of their own supervisor. At times, drivers or dockworkers, to a limited extent, assist mechanics in their work, functioning as an "extra set of hands." For example, the mechanic may ask drivers or dockworkers to test brake lights or directional signals, hold a rollup door in place while he installs a roller, or help with a piece of equipment too large or too heavy for one person to lift, such as a truck hood or a 180-pound spring. It does not appear from the record that drivers or dockworkers actually perform mechanical work as such. The record reveals that drivers make minor repairs, e.g., changing a tail-light bulb, while on the road, but do not perform any work on engines, brakes, or transmissions.

There is a wash bay in the shop area; tractors and trailers are washed by drivers, dockworkers, or mechanics. The Employer does not employ jockeys (yard drivers, whose sole function is to move trailers in and out of the loading and unloading docks) at Tonawanda, which is small by comparison with other service centers; trailers are jockeyed in and out of the docks by city drivers, dockworkers, and mechanics. Weinstein testified that mechanic Gavin Mariano made a local freight delivery in the spring of 1996, when a customer repeatedly inquired about its freight and no city driver was available at the time. The mechanics do not load and unload trucks on a regular basis, Weinstein testified, but they have done so where extra hands were needed; how often this situation arises is not clear from the record. One Saturday in May 1996, mechanic Al Dworzanski was on call when a trailer going from Toronto to Harrisburg, Pennsylvania, encountered brake problems on the Buffalo-Canada Peace Bridge. Dworzanski responded to the emergency call and made a temporary repair which got the truck as far as the Tonawanda service center. Since replacement parts were not immediately available, and the freight was "hot," i.e., on-time delivery was essential, Dworzanski helped the driver to switch trailers and shift the freight from the disabled trailer to the other, so that the driver could continue on his way.

Mechanics are involved in moving "company freight" (parts, new tires, and flat tires that are shipped between service centers), about two to three times a week dockworkers unload inbound company freight and stage it on the dock for mechanics to pick up with a forklift and take to the shop area; the process is reversed for outbound company freight.

During cold weather, mechanics start and warmup trucks for the drivers. Mechanics also help drivers put chains on their tires in the winter. Drivers are permitted to have CB radios, AM-FM radios, and tape players in their trucks, and

may use the shop area to wire these in. If the driver is not skilled enough to do this alone, a mechanic will help; wiring these items the wrong way could result in the burning out of an expensive onboard computer. Drivers are permitted to use shop equipment to install personal radios and equipment on company trucks, on their own time.

Drivers, dockworkers, and mechanics all have the ability to "deadline" a piece of equipment. That is, they may put a fluorescent green tag on the equipment, which is to indicate that it is unavailable due to either damage or safety concerns. An entry is also made in the computer system so that the dispatcher will be aware of the status of the equipment. In addition to maintaining and repairing tractors and trailers, mechanics also service various equipment used on the dock (load locks, pallet jacks, handtrucks).

It is all but self-evident that mechanics must have specialized skills and training that neither dockworkers nor drivers require for their job. Mechanics are also sent to school to stay abreast of new computer systems (drivers and dockworkers do not attend these classes). The Employer does not require that mechanics have a commercial drivers' license (CDL), but strongly recommends it. Two of the mechanics have CDLs, and the third is presently working toward it. Some dockworkers have CDLs, but it does not appear from the record that this is a requirement. All drivers, city and road, must have the CDL. Any employee who operates a forklift must be trained and certified to do so. Dockworkers and mechanics operate forklifts (the evidence also suggests that city drivers operate forklifts, at least occasionally).

The Tonawanda terminal operates from 9 p.m. Sunday until Friday evening, when the outbound crew finishes loading (generally between 10 p.m. and midnight). Dockworkers are assigned to either the inbound or outbound shift. The inbound shift (which unloads freight) begins the workweek at 9 p.m. Sunday; their hours vary during the rest of the week, but most of their work is done between 2 a.m. and noon. The outbound shift loads freight. Again, their hours vary according to need, but for the most part, the outbound shift works from 3 until 11 p.m. or midnight. City drivers' start times are staggered between 6 and 9:30 a.m.; they finish between 4 and 7 p.m. Road drivers' departure times are also staggered; four of them leave the terminal between 8 and 9 p.m. and the other two depart between 11 a.m. and noon, each day. At least one mechanic is on duty around the clock. Mariano works from 9 a.m. to 5:30 p.m., Brian Buli works from 5:30 p.m. to 2 a.m., and Dworzanski works midnight to 8:30 a.m. Mechanics work Monday through Friday, but are on rotating call during weekends. Dockworkers are not on call but they may be asked to come in early if the need arises.

Full-time dockworkers start at \$12.71 per hour, and may earn a top rate of \$14.95; part-timers start at \$9.24, and their top rate is \$12. (The starting and top rates are 4 and 5 cents higher, respectively, for dockworkers who have the CDL.) Full-time city drivers earn between \$13.22 and \$15.55 per hour, and the range for part-timers is \$11.51 to \$14.95. Mechanics earn a starting rate of \$13.26 per hour, and a top rate of \$15.60. Mechanics having the CDL get the same 4- or 5-cent-per hour differential as do dockworkers. Road drivers are paid by the mile, but when performing nondriving work (dock work, or attendance at mandatory meetings or training), they earn between \$13.22 and \$15.55 per hour. The

Employer's office manager, Cynthia Widanka, testified that, although the mechanics' hourly rates are slightly higher than the road drivers', the latter earns substantially more money, over the course of a year, than dockworkers, mechanics, or city drivers, because of the number of miles they drive. Widanka's testimony also reveals that the mechanics have the same benefits (including life insurance, optional health, dental and disability insurance, vacation time, payroll savings, 401(k) and stock purchase plans). All hourly employees (and road drivers) are paid on Thursdays, and are subject to the same annual across-the-board wage increases. The same overtime policy applies to drivers, dockworkers, and mechanics.

At hearing, the parties stipulated that dockworkers, drivers, and mechanics make common use of such facilities as parking lots, entrances to the terminal, the break/lunchroom, vending machines, restrooms and washup facilities, time-clock, and bulletin boards. It was also stipulated that all of these employees are invited to participate in company social functions, such as golf outings, picnics, cookouts, and safety dinners. Although some of its provisions may apply only to one classification or another, the Employer's employee handbook is provided to, and is applicable to, all employees.

Mechanics, drivers, and dockworkers all receive hazardous materials (hazmat) training, which is conducted at the terminal. All three groups of employees take the training together. (It appears from the record that such training is required by law or regulation.) All three groups are trained in fire prevention and the use of fire extinguishers; again, separate trainings are not held for each group, but mechanics, drivers, and dockworkers attend the same training. Forklift training is provided at the terminal for any employee seeking forklift certification; mechanics, drivers, and dockworkers take this training together. Training for the CDL takes place at one of the Employer's larger service centers, Lexington, Kentucky, or Richmond, Virginia, for example. Any employee pursuing the CDL, whether driver, dockworker, or mechanic, goes to one of these service centers for training. Employee meetings are held about once a month. Drivers, dockworkers, and mechanics attend the same meetings.

Mechanics and dockworkers use the same protective gear, which is provided by the Employer. Mechanics are provided with uniforms, free of charge; dockworkers may purchase uniforms if they so desire. Mechanics are expected to provide their own hand tools. The heavier equipment used in their work, such as floor jacks and impact guns, is provided by the Employer.

While the mechanics are directly supervised by Weinstein, dockworkers are directly supervised by the inbound or the outbound supervisor, depending upon their shift. Weinstein testified that, in his absence, the mechanics are supervised by either the inbound/outbound supervisors, or by the service center manager. Weinstein spends at least some time on the dock each day; he testified that he has given directions to dockworkers and drivers, and that they are expected to obey these directives, as any employees expected to obey the directive of any supervisor. Similarly, Weinstein testified, the mechanics under his supervision may not refuse to follow the directive of a dock supervisor or the dispatcher, even if, in the mechanic's judgment, he is engaged in something more important. The record reveals that Weinstein has reported situations involving employees other than mechanics to the

service center manager, who determines whether discipline is necessary. It appears that Weinstein's role in this process is reportorial; the evidence does not support a conclusion that Weinstein (or any other supervisor) exercises disciplinary authority over employees outside of his direct supervision, or that supervisors effectively recommend disciplinary action against employees other than those under their immediate supervision.

Billy Robinette, the Employer's service center manager, testified from personal knowledge regarding the supervisory status of the dock leadman. Fries himself did not testify, nor did any dockworker. Fries works the outbound shift generally from 2 to 10 p.m. Fries works full time; the other four dockworkers on the outbound shift are part-time. The outbound supervisor is present during the shift, and Fries reports directly to him. Apart from the fact that he comes in earlier than the others to "set up" the dock, i.e., to put trailers in the proper position to facilitate loading, Fries does the same thing as the part-timers: he loads freight. As leadman, Fries is paid 25 cents per hour above the full-time rate for dockworkers. No one substitutes for Fries when he is on vacation. Fries has been with the Employer for more than 8 years; during that time he twice declined promotion to a position as an inbound or outbound supervisor. On direct examination, Robinette was questioned about 10 of the 12 statutory indicia of supervisory status, and testified in each case that Fries does not have authority to do any of these things or effectively to recommend them. On cross-examination, the witness was asked about the remaining Section 2(11) indicia, the authority to "assign" and "responsibly . . . direct" employees. Robinette testified that Fries does not schedule dock employees and that, if Fries directs the dock employees at all, it is in the nature of showing them which trailer should be unloaded first, or next.

It is well settled that the Board requires a labor organization to seek not the most appropriate or most comprehensive unit, but only an appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950); *Transerv Systems*, 311 NLRB 766 (1993). In this regard, the desires of the petitioning labor organization are a relevant consideration. *Marks Oxygen Co.*, 147 NLRB 228 (1964). However, the Petitioner's desires are not controlling. *Airco, Inc.*, 273 NLRB 348 (1984). In this case, I find that there is a substantial community of interests among the mechanics and the employees in the petitioned-for classifications, sufficient to warrant the inclusion of the mechanics in the bargaining unit. The Employer is a highly integrated operation, perhaps more so at the facility in question, because it is comparatively small. There are some duties, such as jockeying trailers, that are performed by employees in all three classifications. Certain equipment, such as forklifts, or the wash bay, are commonly used by all three employee groups. While the record does not show that there is regular interchange, there is a degree of overlap in the duties of all three classifications. For example, the evidence reveals that mechanics, at times, help on the dock, and at drivers or dockworkers, though not performing strictly mechani-

cal work, assist mechanics in performing maintenance or repairs. Moreover, there is a high degree of close, daily, work-related contact, at the same facility, between the mechanics and the petitioned-for employees.

There is also a degree of overlap in supervision, although the mechanics and the other employees are not commonly supervised. The inbound or outbound supervisor substitutes for Weinstein in his absence, and a directive to a mechanic from the dispatcher or dock supervisor is regarded by the mechanics with the same authority as if the directive had come from Weinstein. Thus, while there is not common supervision in terms of the Employer's organizational structure, supervision of the classifications in question not entirely separate.

Mechanics enjoy exactly the same benefits as drivers and dockworkers, are subject to the same policies, use the same amenities, and are invited to the same company social functions. The wage rates of mechanics are significantly above those of dockworkers, but so are those of drivers, whom the Petitioner seeks to include. Moreover, the mechanics' wage rates are only 4 or 5 cents per hour above those of the drivers. Mechanics are subject to the same periodic across-the-board wage increases as drivers and dockworkers.

It is true that the Board, in many cases, has found driver units and driver and dockworker units which have excluded mechanics to be appropriate. *Mc-Mor-Han Trucking Co.*, 166 NLRB 700 (1967); *Diamond Standard Fuel Corp.*, 179 NLRB 702 (1969); *Gogin Trucking*, 229 NLRB 529 (1977). However, the Board has also found it appropriate to include mechanics in such units, over the Petitioner's objection where the evidence demonstrated that a strong community of interests required the inclusion of mechanics. *Queen City Transports*, 141 NLRB 964 (1963); *Carpenter Trucking*, 266 NLRB 907 (1983). I find such a community of interests herein. Accordingly, I shall include the mechanics in the unit with drivers and dockworkers.

The remaining issue is the status of the dock leadman, Fries. It is settled that the burden of proving supervisory status rests with the party asserting it. *Quadres Environmental Co.*, 308 NLRB 101 (1992); *Providence Hospital*, 320 NLRB 717 (1996). In this case, the Petitioner asserts that Fries is a supervisor. The Petitioner presented no evidence at all on this issue. The evidence as to Fries came from an employer witness, Robinette, whose un rebutted testimony does not establish that Fries is a supervisor; in fact, Robinette's testimony supports the contrary conclusion. I find, therefore, that Fries, the dock leadman, is an employee within the meaning of the Act, and he shall be eligible to vote in the election.

The record does not reveal whether the Petitioner would proceed to an election in a broader unit than that petitioned for. In the event that the Petitioner informs the Regional Office that it does not wish to proceed to an election, I shall dismiss the petition herein. There are approximately 35 employees in the unit found appropriate herein.