

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

UP SPECIAL DELIVERY, INC.¹

Employer

and

GENERAL TEAMSTERS UNION LOCAL 662,
affiliated with the INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

Case 18-RC-16580

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to me.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²

¹ The name of the Employer appears as amended at the hearing.

² The Employer, UP Special Delivery, Inc., is a Michigan corporation with a place of business located in Eau Claire, Wisconsin. The Employer is engaged in the transportation and delivery of freight. During

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks a unit consisting of all full-time and regular part-time drivers employed at the Employer's Eau Claire, Wisconsin terminal. The Employer contends that the only appropriate unit should include all full-time and regular part-time drivers and warehouse employees (dockworkers) employed at the Employer's Eau Claire facility. Both parties would exclude office clerical employees and guards and supervisors. The parties stipulated that the terminal manager and the three dispatchers should be excluded from any unit found appropriate as supervisors within the meaning of Section 2(11) of the Act. The parties also stipulated that a single office clerical and two sales people should be excluded from any unit found appropriate. There are 25 employees in the unit sought by Petitioner—all truck drivers. The Employer would include an additional 15 workers—all dock employees, although approximately five of these dockworkers hold Class A commercial drivers' licenses and occasionally alternate between dock work and driving.

The Employer is an "LTL" (less than truckload) trucking carrier, which delivers and transports freight. The facility in question is located in Eau Claire, Wisconsin. The

the past calendar year, a representative period, the Employer provided services from its Eau Claire, Wisconsin facility valued in excess of \$50,000 directly to customers located outside the State of Wisconsin. Within the same period the Employer realized gross revenues from the sale of services in excess of \$500,000.

trucks are loaded with freight at the Eau Claire terminal, and deliveries and/or pickups are made within a specified delivery area. The Eau Claire terminal service area extends to the western edge of Minneapolis and north to Duluth (both in Minnesota), east to Marshfield and Wisconsin Rapids, and as far south as Viroqua (all in Wisconsin). The Employer's customers include other businesses, as well as other freight carriers referred to as "inter lines." The Employer also receives freight from its other (UP Special Delivery) terminals; these are referred to as "line hauls." Line hauls are run on a daily basis between Eau Claire and Iron Mountain, Michigan; Eau Claire and Milwaukee; and Eau Claire and Chicago. The Employer both ships and receives freight at the Eau Claire terminal on the line hauls.

The Eau Claire terminal is contained in a building that is 180 feet long and 80 feet wide. There is an office area in the front of the building where the dispatchers, terminal manager, salespeople and OSD (overage, shortage and damage) clerk are located. There are 34 doors or bays that the trailers back into which are used for loading and unloading freight. Each bay has a sign on it designating each freight run that is sent out and/or received. The freight is loaded from the bays onto the trailers, or the freight is unloaded from the trailers and stored in the bays. Pallet jacks, handcarts and fork lifts are used to load and unload the trailers. There are four fork lifts, 25 pallet jacks, and 25 handcarts.

There are three shift dispatchers who go through the bills of lading and route them. The first shift begins at 7:30 a.m., the second shift comes on at 4:00 p.m., and the third shift comes on at 10:00 p.m. and works until 6:30 a.m. The Employer's facility is closed Saturdays and Sundays, although its operation resumes around 7:30 p.m.

Sunday evening. A dispatcher gives the bill of lading to the dock personnel, who then proceed to unload the trailers and stage the freight on the floor. This process often takes between three and four hours and is called “breaking trailers.” The drivers start coming in to begin the runs at about 5:00 a.m., with the last driver arriving about 10:00 a.m. Generally, the longest runs are sent out first. There are departure times that correspond with the different runs. There are 14 regular runs. The trucks are usually all loaded by 7:00 a.m., and then the dockworkers go home. There is one regular dockworker who comes in at 7:30 a.m. Trailers return to the terminal throughout the day.

When the drivers leave the building pulling their trailers, they begin making deliveries. The trailers are equipped with handcarts and pallet jacks for moving freight around and for loading and unloading. The drivers call the Eau Claire facility throughout the day to determine if there are additional pickups or dropoffs. When a driver makes a delivery, they will back up to a dock, roll up the overhead door at the customer’s location and pull the freight off. The customer then signs the delivery receipt, indicating that he/she received the delivery and that it was not damaged. If a driver is making a pickup, the driver will pull up to the dock, assess the freight, count the pieces, check for damage, mark the freight with PRO stickers and load it onto the trailer. There may or may not be dockworkers at the customer’s location to either help with or perform the loading. After the pickup, the driver will notify the dispatcher that the freight has been received.

The drivers return to the terminal any time between 2:30 p.m. and 7:00 p.m. When the drivers arrive at the terminal, they back up to the dock. They then unhook

their trailer, park the tractor, and go to the dispatcher's office to deliver the paperwork to the dispatcher. If at sometime during the day a driver is unable to make a delivery, the driver discusses it with the dock personnel. It appears that either the dockworker or the driver will then complete an OS&D sheet, or give the information directly to dispatch, because the undelivered shipment must be tracked in some way. Typically, the dockworker will take the undelivered shipment and put it in the "warm room," although a driver might perform this task. After the paperwork is filled out, typically the day ends for the drivers.

The drivers that drive trucks having a gross vehicle weight of 26,000 pounds or more are required to have a Class A commercial driver's license. If they are hauling hazardous materials, they are required by the company to have a HAZMAT endorsement. If a vehicle's gross weight is under 26,000 pounds and it has air brakes, a driver must have a Class B commercial driver's license. There is also a Class C license, which is a regular commercial driver's license, and finally a Class D license, which is a regular vehicle license.

At the Eau Claire terminal there are tractor-trailers, straight trucks, and a company pickup truck. There also used to be a cube van, which is now being repaired. The van did not have air brakes, so any person could drive it. Occasionally, people use their own vehicles or the company cars for deliveries, at least in the Eau Claire area. It appears from the record that all of these types of vehicles have been used to make deliveries and/or pickups.

Dockworkers are paid an hourly wage and may receive an incentive payment of up to \$200 a month for minimizing damage to freight. The starting pay for dockworkers

was recently increased to \$8.55 per hour. The drivers did not receive a corresponding pay raise. There are different pay rates for drivers depending on what kind of route the driver drives. For line hauls, drivers are paid based on mileage and number of dropoffs. Peddle drivers, who deliver and pick up freight on a daily basis from what appear to be set routes, get paid a portion of the revenue earned on their routes. Under the XL2 pay system, which applies to undeveloped runs or new drivers, the pay is \$12.50 an hour. There are also extra-board drivers who fill in wherever they are needed. It is unclear from the record how these drivers are paid. Also, it appears from the record that it is the Employer's policy to allow a driver who is performing dock work to continue to be paid as a driver, depending on which payment type is most advantageous at the time.

The drivers and dockworkers have common supervision. Both are supervised by the dispatcher in charge during their shift. Although it is not entirely clear, it appears that the dispatcher who is most familiar with the employee (presumably the one who supervises that employee's shift) is the one who does the employee's evaluation. Then Scott Swinghamer, the terminal manager, discusses the evaluation with the dispatcher and then goes over the evaluation with the employee. In terms of supervision, it does not make a difference what kind of run to which a driver is assigned. The record is somewhat contradictory regarding the training of employees. The terminal manager testified that safety programs at the Eau Claire terminal are often conducted jointly with both the drivers and dockworkers present. However, the record seemed to indicate that separate meetings are scheduled for dockworkers and drivers, and that a driver may attend a dockworkers' meeting if he is unable to make it to the drivers' meeting.

Training topics include information about hazardous materials, sexual harassment, and the like. Safety meetings are held once a week.

Health insurance, life insurance, dental insurance, 401(k) plan options, funeral leave, vacation and holiday benefits are the same for drivers and dockworkers. There is a progressive discipline policy in place at Eau Claire that applies to both drivers and dockworkers. The fork lift policy applies to both drivers and dockworkers. The sexual harassment policy is the same for drivers and dockworkers. If a dockworker becomes a driver or a driver becomes a dockworker, all benefits remain the same.

Drivers are not required to receive fork lift training and can refuse it at their discretion. Drivers have a different uniform than dock personnel. Drivers have short- and long-sleeve shirts, coats and hats. The dockworkers are provided the same uniforms only if they also drive. If they do not drive, they usually wear coveralls, and some wear carhart jackets. All employees get the same hats. The drivers don't always wear their uniforms, and are not sent home to change if they do not do so.

Dockworkers also fail to wear their uniforms on occasion, which does not prevent them from making deliveries or pickups as needed. Dockworkers and drivers may be in the break room at the same time. Drivers may take breaks while they are driving at their own discretion.

In terms of seniority, it appears there are two types of seniority policies: one list of driver seniority; and one list that applies to everyone and which is based on start dates. A driver's seniority date is the first date they are sent out on a solo run. Drivers may bid once a year on which run they want, based on drivers' seniority.

Dock employees are sent out with drivers on occasion. One circumstance where this is likely to happen is when a driver is hurt and has a lifting restriction. A dockworker will then ride along with the driver and unload the freight. The terminal manager estimated that since he has been employed by the Employer (three years total), dockworkers have accompanied drivers due to lifting restrictions about 10 times for periods of a week or longer. Additionally, some deliveries require two people because of the volume of freight. Sometimes customers request that the driver have a helper, especially if the delivery receipts are for very expensive items. The drivers have a good deal of contact with the customers on their routes. The dock personnel, as a general rule, would not unless they were accompanying a driver on their route.

Dock employees also move trucks around the property and between the different bays. The dockworkers start the trucks for the drivers in the winter if it is extremely cold outside. During the second shift, freight must be spotted by matching up the numbers on the freight with the trailer onto which it is supposed to be loaded. The spotter also does the paperwork, which consists of the loading manifest and checking the consignee. Drivers sometimes perform the spotting function.

At least four drivers have asked for extra hours working the dock within the last year. The record indicates that a driver must get permission from dispatch to come in and work on the docks. A driver also must normally ask the dispatcher if he can reorganize or rearrange the load or adjust the load by taking items off. Dockworkers put in the load bars, unless a driver is making a delivery; then the driver may do it. In December of 1998, a driver received two speeding tickets, two days apart. Per DOT regulations, the driver's license was revoked for 60 days. During this time, the driver

worked as a dockworker until his driving privileges were restored. While working on the dock, he was loading and unloading trailers and doing the paperwork required for dock personnel. During this time, it appears from the record that he was paid at the dock rate, based on his employment seniority with the company.

Line-haul drivers also work on the dock often, because their runs are shorter. When the line-haul drivers work on the dock, they punch in and get paid an hourly rate. In addition, if the terminal is short of dockworkers on a given day, a dispatcher will call drivers and ask if they will come in and help. It appears from the record that drivers often come in in this situation. However, the drivers are under no obligation to come in. No driver has ever been disciplined for not coming in to work on the dock.

The record indicates that in the morning, prior to beginning their routes, drivers will often help load their trailers, rearrange the freight on their trailers, and/or work with the dock employees to set up their runs. However, the record indicates that most of a driver's time is spent driving. Drivers primarily do dock work when the company is short-handed, or when they want their loads rearranged. Although not entirely clear from the record, it appears that drivers who are helping out on the dock may or may not be punched in at the hourly rate. Drivers are never scheduled to work the dock. It is beneficial for drivers to assist with loading and unloading their trailers so that they can get on the road faster, and so that the freight is arranged in a logical manner according to the way they want to run their route.

Paul Lanphere is an employee that is both a driver and a dockworker. According to the record, 60 percent of the time Lanphere drives a straight truck, and 40 percent of the time he loads his own trailer and unloads inter-line freight. Vilas Kuehl also drives a

straight truck. Kuehl is a dockworker with a commercial driver's license. About three times a week Kuehl makes pickups in the straight truck. Many dockworkers have also made deliveries in the cube van, including Jeff Saiko and Jim Sires. In addition, Saiko delivers freight along the eastern part of the Webster run at the same time the driver assigned the route makes deliveries on the rest of the route. This occurs about once a week. When Saiko is driving, he is either paid as a dockworker or under the XL pay system.

There are also some employees who started out as dockworkers and later became drivers. One such employee is John Price. He was hired as a dockworker, but he had a commercial driver's license. He worked as a dock employee, but then when a position opened up, he went to work as a line-haul driver. He then alternated between driving and dock work. Currently Price's route is between Eau Claire and Milwaukee. Another dock employee, John Kincheloe, is also in the process of becoming a driver for the Employer. Kincheloe had his commercial driver's license when he started; he works the dock and does short runs. For example, on the date of the hearing, Kincheloe was scheduled to make a pickup in Minong, Wisconsin. The expectation was that he would come in that night to work the dock. Dockworkers are encouraged to get their commercial driver's license. A current employee, Ben Stashek, who was hired as a dockworker, has expressed an interest in becoming a driver. He got a learner's permit and then began going on runs with the drivers. He eventually passed his test and got his commercial driver's license. For the three weeks preceding the hearing, Stashek was driving full time. There are two other dockworkers, Olie Wold and Luke Parker, who are in the process of becoming drivers. Michael Prieve also started with the

Employer as a dockworker and eventually went to full-time driver status. There are several senior drivers who might go out with the new drivers, including Bob Gary, Dennis Fiore, Sid Welter, Norb Schuster and Skip Kaufman. They help train new drivers, let them drive for part of the day, help unload and load the freight at the customer's location, show them how to complete the paperwork, and teach the new drivers customer relations skills. On the other hand, Rodney Schlough began as a driver, but then became the dock leadman.

On the basis of the foregoing and the record as a whole, I find that the unit sought by Petitioner is not appropriate. In reaching this conclusion, I have taken into account the fact that the drivers' primary duty is to drive and that they are never required to perform dock work, nor are they ever disciplined for refusing to load or unload freight. I have also considered the fact that most drivers spend little time at the Eau Claire terminal loading and/or unloading freight. I have also considered the facts that drivers are paid at different rates than dockworkers, and that the qualifications for drivers and dockworkers are different, as drivers are required to have a valid Class A commercial driver's license. On the other hand, the record amply demonstrates that there is some flow-through between these two positions, and that some dockworkers either have or are working toward obtaining their commercial driver's license. Importantly, the record clearly establishes a significant amount of interchange between the drivers and the dockworkers. The instances are so frequent, in fact, that they occur on a daily basis. Moreover, there is also substantial evidence in the record that dockworkers may hold a commercial driver's license or may eventually become drivers, and that drivers may work as dockworkers in the event their commercial driver's license

is suspended, or if they need extra work hours. Although drivers are generally the ones dealing with the customer, the evidence established that dockworkers may ride along with drivers, because they are in the process of getting their commercial driver's license, because the driver has lifting restrictions, or at the customer's request. The evidence also establishes that several senior drivers are used to train dockworkers to become drivers and that these drivers take the trainees along on their runs and teach them how to fill out the paperwork and train them in customer relations. The record further indicated that, although it is not required, on a daily basis drivers help load and unload their trailers, as well as operate the fork lift, pallet jacks and/or handcarts. Additionally, the record demonstrates that drivers and dockworkers are commonly supervised. They are also eligible for all the same fringe benefits. They share the same break room and the same parking lot. They sometimes attend the same meetings, and are subject to the same company policies.

Petitioner contends that in representation cases, the unit sought by the petitioner must only be *an appropriate unit*—not *the most appropriate* unit. I find in this case, however, that a unit that excludes dockworkers is not an appropriate unit. Considering the functional relationship of the dockworkers to the drivers in loading and unloading the trucks, the evidence of frequent interchange (both temporary and permanent), and the common supervision and benefits, I conclude that the drivers cannot exist as a separate unit. Typecraft Press, 275 NLRB 553 (1985) (drivers should be included in unit of nonlithographic employees); Carpenter Trucking, 266 NLRB 907 (1983) (mechanics included in truck driver unit).

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers and warehouse employees employed by the Employer at its Eau Claire, Wisconsin facility; excluding all office clericals, salespeople, guards and supervisors as defined in the Act, as amended.

DIRECTION OF ELECTION³

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in

³ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 21, 1999**.

an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁴

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by General Teamsters Union Local 662, affiliated with the International Brotherhood of Teamsters, AFL-CIO.

Signed at Minneapolis, Minnesota, this 7th day of December, 1999.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

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⁴ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, Towle Building, 330 Second Avenue South, Minneapolis, MN 55401-2221, on or before **December 14, 1999**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.