

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

GARY McCANN TRUCKING, INC.;
SILVER STREAK, INC.; T-MAX, INC.

Joint Employers/A Single Employer

and

Case 19-RC-13787

TEAMSTERS LOCAL 174, affiliated
with INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Petitioner

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, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer² is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
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. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by Gary McCann Trucking, Inc., Silver Streak,
Inc. and T-Max, Inc., at their facilities in Renton and North Bend,

¹ Briefs were received from both parties and were duly considered.

² For purposes of convenience herein, the "Employer" means the three above-captioned entities, collectively.

Washington; but excluding all office clerical employees, and guards and supervisors as defined by the Act.

FACTS

McCann, Silver Streak and T-Max are engaged in the rental of driver-equipped dump trucks at two locations, North Bend and Renton, Washington. The parties stipulated to the appropriateness of the three-entity unit, and that the three were single and/or joint employers. Petitioner seeks a unit of all dump truck drivers. The Employer contends that the only appropriate unit is one which includes all employees other than office clericals. This was the only issue in the hearing.

Although there is no collective bargaining history involving any of the employees herein, since about March 1999 some of the employees have been engaged in a strike, also referred to in the record as a lockout, which was continuing at the time of the hearing. Employer Gary McCann Trucking has facilities in Renton; Employers Silver Streak and T-Max have facilities in North Bend. After the strike/lockout commenced, the McCann trucks were moved from Renton to North Bend and dispatched from there. Evidence suggests, but does not firmly establish, that after the current labor dispute is resolved, the McCann trucks will remain at North Bend. McCann Trucking has been in operation for more than 20 years. Silver Streak and T-Max both commenced operations within the last few years, and both are owned by Gary McCann's daughter, Tina Benson.

McCann's operations are supervised by Gary McCann himself. At Silver Streak and T-Max, in addition to Benson, her brothers Kevin McCann and Tim McCann have statutory supervisory authority. Kevin McCann has primary responsibility for the shop and Tim McCann has primary responsibility for the drivers. However, both McCanns have supervisory authority over all of the Employer's employees, as does Benson, who schedules the work and dispatches the drivers for all three companies. There is no apparent separate shop "supervisor" for McCann.

It is clear that owners Gary McCann and Tina Benson are statutory supervisors and excluded from any units. The parties stipulated Tim McCann and Kevin McCann are statutory supervisors and the record supports that stipulation; thus, all four are excluded from the unit. There is no suggestion or contention that there are any additional supervisors.

There are approximately 33 employees employed by the three companies; about 24 are solely drivers; 4 are combination mechanic/drivers and the remainder, 5, are maintenance employees. The 4 driver/mechanics are Garry Ploegsma and Chuck Slagg, both employed by McCann, and Paul Rauch and Howard Ickes, both employed by Silver Streak.³ Both Ploegsma and Slagg were hired as mechanics and later became drivers. The only "pure" mechanic is T-Max's Blake Boyle. McCann has three maintenance employees, Ron Brighton, Tony Magda, and Steve Nickel; T-Max has one, Tom Korfus, and Silver Streak has none.

The drivers report for work in North Bend between 6:00 and 6:30 a.m., receive their assignments, and depart the Employer's premises. They return between 3:00 and 6:00 p.m. The North Bend facility occupies about seven and a half acres. Structures include a five-bay shop about 7,000 square feet in size, and an 800-square-foot office in a separate building. Boyle is the only full-time mechanic.⁴ He generally arrives at about 6:30 a.m., works until all the drivers have left for the day's assignments, leaves for some period of time, and then returns later in the day. He often works 50 to 70 hours per week. Rauch and

³ Petitioner would include Ploegsma, Rauch, and Ickes in the unit, but opposes inclusion of Slagg.

⁴ Supervisor Kevin McCann also works as a mechanic.

Ickes both spend about 30 percent of their time doing mechanical work and about 70 percent driving. Ploegsma drives about half his time and does mechanical work the other half. Slagg is a part-time employee; he works about 20 hours per week, spending about five of those hours driving, the rest as a mechanic. The record does not reveal any regular schedule of hours for Rauch, Ickes, Ploegsma, or Slagg with respect to their work as mechanics.

Drivers are paid between \$15.00 and \$18.00 per hour. Among the mechanics, Boyle gets \$12.50 per hour; Ploegsma gets \$18.00 per hour for mechanical work and \$16.50 for driving; Rauch and Ickes both receive a single rate, \$17.00 per hour; and Slagg is paid a single rate of \$20.00 per hour. Maintenance employees Brighton and Magda receive \$13.50 per hour; Nickel, \$10.00 per hour; and Korfus, \$8.50 per hour. All T-Max and Silver Streak employees receive the same benefits, including medical, dental, vision, life insurance, and vacation. McCann employees have a different medical plan and do not have dental, vision, or life insurance.

Drivers are paid \$6.00 per hour for “non-productive” time, such as the 15 minutes required at the beginning of the day to warm up a truck and perform a pre-trip inspection; time spent washing a truck; and travel time to the first assignment and back from the last. Drivers may arrive in the morning to find that their assignments for the day have been cancelled and there is no work for them that day. This does not happen in summer, but happens once every one to three months per driver during the winter. There is no similar “non-productive” rate for mechanics, and their work does not get cancelled in any like manner.

Maintenance employees perform maintenance on the trucks, including oil changes, tire changes, servicing, road calls, washing trucks, and providing assistance to drivers, such as directing them into a trailer hook-up. They also do sweeping and similar tasks around the yard and buildings. Korfus works only in North Bend. Brighton works part of the time in North Bend. Magda works only in Renton. Nickel has been laid off since the strike/lockout began, and both Brighton and Magda have been working fewer hours. At the time of the hearing, Korfus was working from about 10:00 a.m. to 7:00 or 8:00 p.m. Magda currently works about 24 hours per week, and Brighton about 25 hours per week. Prior to the strike/lockout, Brighton worked 11:00 a.m. to 4:00 p.m., Magda worked 11:00 a.m. to 6:00 p.m., and Nickel worked 12:00 noon to 6:00 p.m.

During pre-trip inspections, drivers sometimes add oil or other fluids,⁵ put air in tires, or change light bulbs. Some drivers adjust their own brakes, and some drivers wash their own trucks. Occasionally, Blake performs the pre-trip inspection for a driver who has a late call, which happens almost daily in winter and about once a week in summer. At the end of each day, drivers make another inspection of their trucks and leave a written message to the mechanics regarding any problems that need to be addressed. In circumstances in which a mechanic is called to make roadside repairs, the driver assists by directing traffic, handing tools, or in any other manner that may be required.

All drivers are required to hold commercial driver’s licenses (CDLs), not required of mechanics or maintenance employees. In addition, prior driving experience is required, although not necessarily dump truck experience. Mechanics are required to have training and experience working on similar vehicles. Maintenance employees are not required to have any prior experience or training.

Mechanic/Driver Units

⁵ Oil or other fluids are available to the drivers in the shop in labeled one-gallon jugs, prepared for them by maintenance employees.

The Board has addressed the issue of whether mechanics and other employees belong in a unit composed primarily of drivers, in a number of cases. The most important factor is that of community of interest, which is analyzed on a case-by-case basis.

In *Mc-Mor-Han Trucking Co.*, 166 NLRB 700 (1967), the Board found a separate unit of truck drivers, as requested by the petitioner, appropriate, where the truck drivers performed a separate function from that of mechanics and spent a substantial amount of time away from the terminal, there was virtually no interchange between truck drivers and mechanics, and there were substantial differences in their compensation, hours, and other conditions of employment. These differences between the two groups were not overcome by interests which they shared, i.e., identical insurance and holiday benefits and common supervision.

In *Liquid Transporters, Inc.*, 250 NLRB 1421 (1980), the petitioner sought a unit including drivers and mechanics,⁶ while the employer contended that the mechanics should be in a separate unit. The Board found the mechanics to constitute a separate unit, where they worked different hours, were paid on a different basis, and had a different payroll period, seniority list, grievance procedure, and supervision from the mechanics.

In *C.M. Carpenter*, 266 NLRB 907 (1983), in which the petitioner had requested a separate unit of dump truck drivers,⁷ the Board found that the unit also included tank truck drivers and mechanics, where the drivers assisted the mechanics in their work. When mechanics went out to repair trucks away from the employer's facility, drivers assisted them in fixing flats and handed them tools for engine work. Further, both mechanics and drivers changed oil, greased trucks, and changed tires in the shop. Some six of the 53 drivers brought their trucks into the shop every week or two to service them. These six drivers assisted mechanics in pulling engines from trucks and substituting rebuilt engines, installing drive shafts "hanging rear ends", and removing radiators.

In *Courier Dispatch Group*, 311 NLRB 728 (1993), the petitioner sought a unit of drivers, excluding the sole mechanic. The Board was not asked to, and did not, review the Regional Director's determination that the mechanic was included in the drivers' unit, which decision was based on the drivers passing information regarding necessary routine repairs to the mechanic; his regular, work-related contacts with drivers, and his sharing of some conditions of work with them. Further, the mechanic, if excluded from the unit, would have been the only unrepresented employee.

In *Overnite Transportation*, 322 NLRB 347 (1996), (*Overnite I*, herein), the Board found a unit of drivers, excluding mechanics, as sought by the petitioner, to be an appropriate unit. There was no regular interchange between the mechanics and the drivers, the mechanics had specialized skills, were separately supervised, and worked different shifts.⁸ In *Overnite Transportation*, 322 NLRB 723 (1996), (*Overnite II*, herein), in denying the employer's motion for reconsideration of the *Overnite I*⁹ the Board

⁶ The petitioner in *Liquid Transporters* was willing to proceed to election in any unit or units found appropriate.

⁷ The petitioner in *Carpenter* had agreed to proceed to an election in any unit found appropriate.

⁸ In *Overnite I*, the petitioner had not stated on the record any willingness to proceed to election in any broader unit.

⁹ The Employer's contention in *Overnite II* was that the Board's decision in *Overnite I* was inconsistent with Board action in earlier cases involving the same employer, in which the Board had declined review of the Regional Director's decisions in which combined driver/mechanic units had been found appropriate. In *Overnite II*,

said that either unit (that is, a unit including only drivers, or a unit including both drivers and mechanics) can be an appropriate unit under Board precedent. The determinative factor is community of interest. In *Overnite Transportation*, 325 NLRB No. 113 (1998), (*Overnite III*, herein), the Board upheld the Regional Director's findings, based on community of interest factors, that a unit of truck drivers, excluding mechanics and "check bay attendants" (similar to the maintenance employees herein), was appropriate, where those employees worked in a physically separate area, had separate break room and restroom facilities, were the only employees involved to whom the Employer furnished uniforms at its expense, were highly trained and skilled craftsmen who performed tasks different from other employees, and received regular periodic training. Only 1 of 14 mechanics regularly did arguable truck driving (as opposed to vehicle moving in connection with repairs). In that case, the Board again emphasized that the guiding principle in any unit determination is community of interest, that there can be more than one appropriate unit, and that as between *appropriate* units, the petitioning union's petitioned-for unit will prevail.

In assessing community of interest, the Board considers such factors as the method of compensation, hours of work, benefits, separate supervision, qualifications, training and skills, job functions, work situs, frequency of contact with other employees, integration of work functions, interchange with other employees, and history of bargaining. *Overnite II*, supra; *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962).

In the case before me, all employees are paid hourly. The full-time mechanic and the maintenance employees receive lower wages than do the truck drivers, but the drivers, when performing mechanical work, are paid at rates within the drivers' range. One mechanic who also drove is paid, for both driving and mechanical work, a rate higher than any driver or any mechanic. The full-time mechanic and the maintenance employees work different hours than do the drivers, but Boyle is present in the morning when the drivers report, and both Boyle and Korfus are regularly present in the afternoon when the drivers return. The record does not reveal any specific evidence of additional, on-the-job contacts between the drivers and other employees, except in a break-down context. There is no distinction in benefits between drivers and other employees; rather, the differences that exist result from the identity of employing entity, not employee classification. Drivers obviously have different skills, training, and experience than other employees. The work of the other employees is functionally integrated with that of the drivers, in that the other employees provide a support function to the drivers, and drivers occasionally assist mechanics in making roadside repairs. There is significant interchange between the two groups in that four employees who drive trucks also routinely perform work as mechanics; or, put another way, four of the nine employees who perform mechanical functions regularly drive trucks as revenue producers. Two driver/mechanics were hired as mechanics and later given work as drivers. In addition, drivers regularly perform work similar to that of maintenance employees, i.e., adding oil and other fluids, and some drivers wash their own trucks. There is a fair amount of common supervision at the lowest level, in that Kevin McCann, Tim McCann, and Tina Benson all have supervisory authority over all employees in question, including drivers employed by Gary McCann. At McCann, there is no separate supervision for drivers as compared to mechanics; at the other two entities, supervisor Kevin McCann concentrates on shop matters, while supervisor Tim McCann concentrates on driver matters, but the line between the two is fuzzy, since both have authority over all employees at all entities. A finding that a unit confined to "any employee who drives" is an appropriate unit would leave a residual group of approximately five

the Board explained that its findings in some cases that a unit of drivers and mechanics is appropriate, and in other cases that a unit of drivers excluding mechanics is appropriate, are not inconsistent. Rather, such findings are consistently based upon the facts in each case with respect to community of interest. Clearly, the *Overnite* cases do not establish any presumption that a unit of drivers excluding mechanics is appropriate; indeed, in *Overnite II*, the Board stated that either unit might be appropriate, depending upon the particular circumstances found in each case.

employees, out of a total of about 33 employed, or 15%. Petitioner has stated its willingness to proceed to an election in any unit found appropriate.¹⁰

In comparing the instant matter to cases cited above, I note that in *Mc-Mor-Han Trucking*, there was virtually no interchange between truck drivers and mechanics, and in *Carpenter*, about 11 percent of the drivers regularly performed mechanical work. Here, about 14 percent (4 of 28) of the drivers regularly perform mechanical work. Further, in *Carpenter*, when mechanics went out to repair trucks at the roadside, the drivers assisted them by handing them tools, as occurs herein. In *Courier Dispatch Group*, the mechanic relied on information from drivers regarding the need for certain repairs, as occurs here. In *Liquid Transporters* (separate units appropriate), the mechanics not only worked different hours, but they had a different payroll period, were paid on a different basis, had separate seniority and a separate grievance procedure, and were separately supervised, unlike here. In *Overnite I* (separate driver unit appropriate), there was no regular interchange between mechanics and drivers to the mechanics had specialized skills, were separately supervised, and worked different shifts. Here, in contrast, four out of five mechanics are also drivers, all drivers perform some of the same functions as maintenance employees, and all employees are subject to common supervision. In *Overnite III* (separate driver unit appropriate), there was no interchange between the drivers and other employees, nor any shared supervision, again in contrast to here.

These factors suggest that the drivers and other employees herein are more analogous to drivers and mechanics found to be included in the same unit in the cases cited above, than to those found not to be so included. In this regard, I note that here all employees share the same method of compensation and have the same benefits (except for differences accounted for by the difference in employer); their work is functionally integrated; there is regular, substantial interchange; and they are all subject to the same supervision; there is no mechanic-only supervisor. These factors suggest a strong community of interest among all employees. I note that the pay scale for driving work falls within the pay scale for mechanical work, with no clear boundary. There is no clear supervisory boundary between mechanics and drivers; and there is no clear boundary between mechanic functions and driving functions.

In sum, there is no natural place to draw a line between the two kinds of work. Therefore, I find that the petitioned-for unit is not here appropriate for collective bargaining, while the larger, “all-employees” unit is. Since the Petitioner is willing to participate in such a unit, I will direct an election therein.

Slagg Placement

There remains the issue of the unit placement of part-time driver/mechanic Chuck Slagg. On the record, Petitioner contended that Slagg should not be included in any unit found appropriate because he is also employed elsewhere. As has been said, Slagg works for the Employer about 20 hours per week. He also has a full-time job elsewhere, working for an employer unrelated to those involved herein.

The Board includes part-time employees in a unit with full-time employees when the part-time employees perform work within the unit on a regular basis for a sufficient period of time to demonstrate that they have a substantial and continuing interest in the working conditions of the unit as a whole. *Pat’s Blue Ribbons*, 286 NLRB 918 (1987). The fact that an employee has a regular full-time position

¹⁰ So far as can be determined, the Board has never stated that it is more willing to thrust a “more appropriate” unit upon a union that seeks a “less appropriate” unit, but is willing to accept the former unit. Nevertheless, that does appear to be the case. See, e.g., *Liquid Transporters* and *Carpenters*, supra. I do not, however, rely on any such perception in my decision herein.

elsewhere in addition to his regular-part-time unit employment, does not destroy his community of interest with other employees at the latter. *Tri-State Transportation Co.*, 289 NLRB 356 (1988).

Inasmuch as the record establishes that Slagg performs unit work regularly, for approximately 20 hours per week, I conclude that he is included in the unit.

There are approximately 33 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall 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 of this Decision, 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 employees 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 an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by TEAMSTERS LOCAL 174, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to insure that all eligible voters may 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 which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 4 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Seattle Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, on or before July 30, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

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 August 6, 1999.

DATED at Seattle, Washington, this 23rd day of July, 1999.

/s/ PAUL EGGERT

Paul Eggert, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

440-1760-9167-9267
460-5067-3550