

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

JOHN E. GRUNDEN III t/d/b/a  
DEAN Y. LITTLE BEVERAGE  
DISTRIBUTOR <sup>1</sup>

Employer

and

Case 4-RC-19634

TEAMSTERS LOCAL UNION NO. 771  
a/w INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO <sup>2</sup>

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 record 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 Employer 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 Employer, a sole proprietorship owned by John E. Grunden III, operates a beer and beverage distributorship in Columbia, Pennsylvania. The Petitioner seeks to represent a unit of four warehouse drivers.<sup>3</sup> The Employer contends that it has no employees classified as drivers and that the appropriate unit should include its nine employees, i.e., four full-time employees (**Robert Bailey Sr., Robert Bailey Jr., John Klinestever** and **John**

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Petitioner's name appears as amended at the hearing.

<sup>3</sup> Counsel for the Petitioner also referred to the unit as "driver/salesmen."

**Neidig**) and five part-time employees (**Jeff Fortna, Susan Harclerode, Jim Musser, Rosaline Musser** and **Greg Nikolaus**). The Petitioner would exclude the part-time employees as casuals. The Petitioner further contends that Jeff Fortna, John E. Grunden's brother-in-law, should be excluded from the unit because of his familial relationship with Grunden. The Petitioner is willing to proceed to an election in any unit found appropriate herein.

The Employer's facility consists of a single building that serves as its warehouse and retail store. About 35 to 40 percent of the Employer's business is wholesale and the remainder is retail. The Employer's hours are from 8:30 a.m. through 8:00 p.m. on Monday, from 8:30 a.m. through 9:00 p.m. on Tuesday through Thursday, and 8:30 a.m. through 10:00 p.m. on Fridays and Saturdays. The store is closed on Sundays. The Employer's four full-time employees work in rotating shifts covering the Employer's operation from Monday morning through 5:00 p.m. on Saturday each week. The Employer's part-time employees work on Friday nights, Saturdays from noon through 10:00 p.m., on some holidays and to cover absences. Susan Harclerode works from 5:00 p.m. to 7:00 or 8:00 p.m. each day selling lottery tickets. Grunden is the sole supervisor of all of the Employer's employees.

The Employer's wholesale business consists largely of bars and hotels in the Columbia, Pennsylvania area. The Employer delivers beer using either its one large truck that requires a commercial driver's license (CDL) to operate, or one of its two minivans that do not. Two of the Employer's full-time employees, Robert Bailey Sr. and Robert Bailey Jr., possess CDLs and operate the large truck in addition to the minivans. The two other full-time employees, John Neidig and John Klinestever, do not possess CDLs and they drive only the two minivans. The Employer operates its large truck sparingly, logging only 3000 miles during the entire year before the hearing. Each Tuesday, Bailey Jr. uses the large truck for a single delivery to Smith's Hotel, which is only a few hundred feet from the Employer's store. Bailey Jr. uses the truck despite the short distance between the two facilities because the hotel orders more beer and beverages than can be carried by hand or minivan. On Wednesdays, Bailey Jr. uses the large truck to deliver beer to Marietta, Pennsylvania, which is about five miles from the Employer's store. Because that job also entails unloading the truck, it takes Bailey Jr. about 2 ½ hours to complete the trip. Bailey Sr. uses the large truck to pick up beer at a bottling plant in York every other Wednesday and from a wholesaler in Lancaster, Pennsylvania when needed. The York trip takes about three hours. It is not clear from the record how long the Lancaster trip takes. Lancaster is about 12 miles from the Employer's store. Bailey Sr. performs virtually all of the pick-up work. The Employer also obtains beer from other distributors, who bring the product to the Employer's store in their trucks.

All four full-time employees perform the same general functions: they drive trucks to deliver beer to bars and hotels; sell beer and beverages at the store; run the cash register; sell lottery tickets;<sup>4</sup> stock beer on shelves, in the refrigerator or on pallets and each of them, except Klinestever, load and unload trucks. Klinestever is physically unable to load and unload trucks. The Employer pays its full-time employees \$11.95 per hour except Neidig, whom the Employer pays \$9.50 per hour.<sup>5</sup> Full-time employees are paid weekly and are permitted to cash their paychecks with money from the cash register. Full-time employees are guaranteed 40 hours of work per week, receive 17 paid vacation days, six holidays and one paid half day off for Election Day, fully paid medical insurance and a defined contribution pension plan with matching contributions. In addition, full-time employees receive a uniform, jacket and hat.

The part-time employees perform the same job duties as full-time employees. Other than Susan Harclerode, who sells only lottery tickets, they sell beer and beverages at the store, run the cash register, sell lottery tickets, stock beer and, except for Harclerode and Rosaline Musser, unload trucks and drive the Employer's minivans. Although part-time employee Jim Musser has a CDL, he has used it only once for the Employer. The part-time employees do not receive any benefits, except Harclerode, who receives \$20 per month from the Employer in a defined contribution pension plan.<sup>6</sup> Harclerode earns \$6.25 per hour while the other part-time employees earn

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<sup>4</sup> Although Susan Harclerode sells lottery tickets in the afternoon through 7:00 p.m. when sales stop for the day, full-time employees sell lottery tickets until Harclerode arrives in the afternoon.

<sup>5</sup> The record shows that Grunden agreed to increase Neidig's wages to \$11.95 per hour when he obtains his CDL.

<sup>6</sup> Harclerode is Bailey Sr.'s daughter and Bailey Jr.'s sister.

\$6.00 per hour. The part-time employees are paid in cash by taking money from the cash register at the end of each shift.

Jeff Fortna is Grunden's brother-in-law and has worked for the Employer since 1987. He is employed full-time elsewhere and works for the Employer every other Saturday night, on Friday nights in the summer to assist the full-time employee scheduled to work on Friday nights, on holidays and when needed. During the period from December 1, 1998 through March 7, 1999, Fortna worked 62 hours or an average of 4.7 hours each week. Fortna has no ownership interest in the Employer's business, does not live with Grunden and is not financially dependent on Grunden. He earns the same wage rate as other employees and does not enjoy any special working conditions.

Susan Harclerode has worked for the Employer since 1995. She works weekdays from 5:00 p.m. to 7:00 or 8:00 p.m. solely to sell lottery tickets, a function that other employees perform when she is not working. Harclerode worked 192 hours during the period from December 1, 1998 through March 7, 1999, an average of 13.5 hours per week.<sup>7</sup>

Jim Musser has worked for the Employer since January 1995. He works full-time for a trucking company. Musser works for the Employer on alternate Saturday nights and on an as-needed basis. Because of his work schedule for the trucking company, Musser is sometimes available to work for the Employer during regular business hours. During the period from December 1, 1998 through March 7, 1999, Musser worked 57 hours, an average of 4.4 hours per week.

Rosaline Musser, Jim Musser's wife, has worked for the Employer since August 1998. She works on alternate Saturday nights with her husband on an as-needed basis. During the 13-week period from December 1, 1998 through March 7, 1999, she worked 60 hours, an average of 4.6 hours per work.

Greg Nikolaus worked for the Employer for several years before taking a seven-month leave of absence because he was being married. He returned to the Employer the week before the hearing and worked for 5 hours that week. Prior to his leave of absence, he generally worked the same hours as Fortna.

From in or about 1986 or 1987 until 1995, the Employer and the Petitioner were parties to successive collective bargaining agreements. According to Grunden, the Petitioner was "voted out" in 1995. Although the Employer did not employ part-time employees at the time it entered into its first collective bargaining agreement, part-timers have been employed by the Employer since 1987. They were not included in the unit.

It is well settled that a petitioner need only seek *an* appropriate unit and not the most appropriate unit. *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* on other grounds 190 F.2d 576, 28 LRRM 2364 (7th Cir. 1951); *Overnite Transportation*, 322 NLRB 723, 724 (1996); *Esco Corp.*, 298 NLRB 837, 839 (1990). The Board, moreover, has frequently found units of truckdrivers to be appropriate. See, e.g., *Mc-Mor-Han Trucking*, 166 NLRB 700 (1967). Where, however, an employer's operations are so functionally integrated that a petitioned-for group of truckdrivers does not constitute a separate and distinct group, the Board will find that a unit limited to truckdrivers is not an appropriate unit. *Typecraft Press*, 275 NLRB 553, 555 (1985); *Atchison Lumber Co.*, 215 NLRB 572 (1974); see *Transerv Systems*, 311 NLRB 766 (1993) (bicycle messengers).

The evidence establishes that the petitioned-for employees are responsible for far more than driving the Employer's trucks. They are instead responsible for the entire range of tasks required to operate a wholesale and retail beer and beverage distributorship and their role as drivers is incidental to their overall job responsibilities. Accordingly, I find that there is no functionally distinct group of drivers who share a community of interest separate and apart from the Employer's other employees. *Typecraft Press*, *supra*, 275 NLRB at 555; *Atchison Lumber*, *supra*, 215 NLRB at 572; see *Transerv Systems*, *supra*, 311 NLRB 766; *Big Buck Lumber*, 241 NLRB 639 (1979); *Napa Columbus Parts*, 269 NLRB 1052 (1984).

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<sup>7</sup> Harclerode actually works 16 hours per week. However, she worked only 12 of the 13 weeks during that period of time.

In deciding whether individuals designated as “casuals” should be included in a bargaining unit as regular part-time employees, the Board looks at whether the individuals perform unit work and whether they work with sufficient regularity as to have a community of interest with the unit. *Trump Taj Mahal Casino Resort*, 306 NLRB 294 (1992); *Tri-State Transportation*, 289 NLRB 356, 357 (1988); *Pat’s Blue Ribbons*, 286 NLRB 918 (1987); *Mid-Jefferson County Hospital*, 259 NLRB 831 (1981); *NLRB v. Trump Taj Mahal Associates*, 2 F.3d 35, 144 LRRM 2211 (3rd Cir. 1993). Under the Board’s long-standing *Davison-Paxon* eligibility criteria, an employee works with sufficient regularity in the event the employee works an average of four hours or more per week for the calendar quarter prior to the eligibility date. *Davison-Paxon Co.*, 185 NLRB 21, 23–24 (1970); *Trump Taj Mahal Casino Resort*, supra, 306 NLRB at 295. The part-time employees perform the same sort of work as the full-time employees. Thus, Fortna, Nikolaus and Jim Musser drive the Employer’s minivans to deliver beer and beverages, they and Rosaline Musser also work in the Employer’s store, putting away stock, selling product to retail customers using the Employer’s cash register and selling lottery tickets. These functions are the same job functions as those performed by the full-time employees. While Susan Harclerode sells only lottery tickets and does not perform the entire range of duties as the other employees, her work is one of the functions performed by all the other employees and she works with the other employees who are on duty at the same time as she. All of the employees work under the same supervisor and all of the part-time employees except Nikolaus have worked an average of four hours or more per week in the calendar quarter prior to the hearing. Although the full-time employees earn almost twice what the other employees earn, and have benefits not enjoyed by the rest of the staff, I find that the part-time employees perform unit work on a regular basis and have a sufficient community of interest with the full-time employees to include them in the unit. Accordingly, I find that **Susan Harclerode, Jeff Fortna, Jim Musser and Rosaline Musser** are regular part-time employees and I shall include them in the unit.

As to **Greg Nikolaus**, the record shows that he returned to work the week before the hearing following a seven-month leave of absence and that he worked only 5 hours during that week. Although Nikolaus was not absent for one of the reasons set forth in the Direction of Election, i.e. illness, vacation, temporary layoff or on economic striker status, he may nevertheless meet the *Davison-Paxon* eligibility criteria. In view of the foregoing, I find that if Greg Nikolaus averages four or more hours per week during the period from the date he returned to work after his leave of absence through the eligibility date, he is a regular part-time employee and eligible to vote in the election. *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1193 fn.4 (1994); *Modern Food Market*, 246 NLRB 884 (1979).

By limiting the meaning of the word “employee,” Section 2(3) of the Act excludes from the protections of the Act “any individual employed by his parent or spouse.” The Board also excludes from bargaining units employees who reside with or are financially dependent upon a relative who owns or manages the business, or if the employee enjoys a special status, such as higher wages or favorable working conditions not afforded to unrelated employees. *NLRB v. Action Automotive*, 469 U.S. 490, 495 (1985); *Allen Services Co.*, 314 NLRB 1060, 1062 (1994); *MC Decorating*, 306 NLRB 816, 817 (1992). **Jeff Fortna** is owner Grunden’s brother-in-law. Fortna lives in his own home and is not financially dependent on Grunden and there is no evidence that he enjoys any special status as a result of his familial relationship with Grunden. He earns the same wages as other part-time employees and does not enjoy any special working conditions. Accordingly, I find that Fortna is eligible to vote in the election. *Allen Services*, supra, 314 NLRB at 1062. Contrast *MC Decorating*, supra, 306 NLRB at 817.

Based on the foregoing, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:<sup>8</sup>

All full-time and regular part-time employees employed by the Employer at its 1224 Lancaster Avenue, Columbia, Pennsylvania store and warehouse, excluding clerical employee, guards and supervisors as defined in the Act.

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<sup>8</sup> Although the findings above add four employees the Petitioner sought to exclude from the unit, the Petitioner has an adequate showing of interest despite the larger 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,<sup>9</sup> 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 UNION NO. 771 a/w INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO**

## **LIST OF VOTERS**

In order to ensure 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); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 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. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **April 20, 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, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **April 27, 1999**.

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<sup>9</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

Dated April 13, 1999

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan  
**DOROTHY L. MOORE-DUNCAN**  
Regional Director, Region Four

400-7550  
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