

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

DOLLARLAND, INC.¹

Employer

and

Case 4-RC-19649

TEAMSTERS UNION LOCAL NO. 115,
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO²

Petitioner

DECISION AND ORDER

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. No 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, for the following reasons:

The Employer is engaged in the retail sale of general merchandise priced at one dollar or less at several stores in Philadelphia, Pennsylvania metropolitan area. The Employer operates two warehouses across the street from one another in Philadelphia. The Petitioner seeks to represent a unit of approximately eight or nine full-time and regular part-time truck drivers employed by the Employer at the warehouses.³ The Employer takes the

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

² The name of the Petitioner appears as amended at the hearing.

³ The Petitioner amended its petition at the hearing to include regular part-time drivers.

While the record does not reflect a history of collective bargaining between the Employer and the Petitioner, I take administrative notice of the fact that prior representation elections have been held in the broader warehouse unit.

position that the unit must also include 45 or 46 warehouse employees and two back-up drivers who work at the warehouses. The Petitioner declined to state its position on the record as to whether it would be willing to proceed to an election in any other unit found appropriate by the Board.

Warehouse One, the larger of the Employer's two warehouses, contains a parking area, a break room/lunch area and two loading docks. Four more loading docks are under construction. Merchandise is received at one end, placed in the warehouse, picked, brought to the staging area, loaded on trucks and delivered to the Employer's retail stores. Warehouse One is operated on two shifts. Warehouse Manager William Licabiaski, and an Assistant Manager and two supervisors oversee operations on the day shift. Another supervisor oversees the second shift. The Warehouse One staff includes receiving employees. Within this group are breakout employees, who do predetermined dispersements to the stores, and locating employees who put the newly received goods into locations in the warehouses. Order pickers pick and palletize goods for transport to the stores. The Warehouse One staff also includes shipping employees; replenishing employees who replenish goods in warehouse bins for the order pickers; and a maintenance and clean-up employee.

The Warehouse Manager is in charge of all warehouse employees and drivers. Although two other supervisors assist him with hiring, he is ultimately responsible for all employee hiring and firing. He directly dispatches the drivers and addresses any problems they encounter with deliveries.

On Warehouse One's first shift, one or two receiving employees and three drivers start at 5:00 a.m. The remaining first-shift employees start at 7:00 a.m. and work until 3:30 p.m. The second-shift employees work from 3:30 p.m. until midnight. The three shipping employees who begin at 5:00 a.m. assist drivers with loading their trucks. On average, at least one shipping employee helps load trucks for at least one hour per day, four days per week at Warehouse One.

Warehouse Two is a one-shift operation with two supervisors, one for receiving and one for shipping. Warehouse Two can accommodate three to four trucks at one time. The warehouse operation is essentially the same as at Warehouse One except that, unlike Warehouse One, shipping and receiving are done at the same doors. On average, at least one employee begins work at 5:00 a.m. at Warehouse Two and assists drivers with loading their trucks each day at least twice per day for at least an hour total each day.

The Employer has six straight trucks and two tractor-trailers and tries to hire only drivers who possess commercial drivers licenses (CDLs). All of the Employer's regular drivers currently have at least a Class "B" license, while those who drive tractor-trailers must have a class "A" license with special endorsements. The two back-up drivers, who work in the warehouse when not driving, currently do not have CDLs. A few of the eight or nine drivers arrive for work at 5:00 a.m., a few more arrive at 5:30 a.m., and the remainder arrive at 6:00 a.m. They work in excess of eight hours per day, typically from 8½ to 10½ hours per day, Monday through Saturday; and their overtime averages about 20 hours per week. Only two warehouse employees work on Saturdays.

On a typical day, drivers clock in between 5:00 and 6:00 a.m. at the timeclock in the break room at Warehouse One.⁴ They then obtain the keys to their trucks, and the Warehouse Manager directs them either to back up to load at Warehouse One or to load at Warehouse Two across the street. They load their trucks utilizing electric jacks or forklifts and begin making deliveries to the various store locations. The drivers report to the Warehouse Manager by radio but they return to the warehouse after each delivery for reloading and making more deliveries. The record reflects that for some drivers, this cycle can be repeated four or five times per day. These drivers may spend four to five hours per day at the warehouse.

Most of the drivers' time at the warehouses is spent in the staging area loading their trucks. Drivers may also help warehouse employees break up skids when there are too many for the truck. A driver may also seek out a warehouse employee with a forklift in order to consolidate pallets for loading onto the truck. Drivers occasionally retrieve refrigerated items to be delivered to the stores but are not required to work in the warehouse picking or packing merchandise.

⁴ Warehouse employees also use this timeclock.

Drivers and warehouse employees are hourly paid. Drivers start at \$10 per hour while warehouse employees start at \$6 per hour. Drivers, as well as the two back-up drivers, are required to have valid drivers licenses. The back-up drivers generally earn more money when they are driving. In addition, when performing driving duties, the back-up drivers are required to fill out logs. After a 90-day probationary period, drivers get a 75-cent raise while warehouse employees receive a 50-cent raise. Both drivers and warehouse employees receive overtime pay for hours in excess of 40 per week, and drivers typically accumulate about 20 overtime hours per week. Warehouse employees rarely receive overtime hours.

All employees have the same benefits, work under the same personnel policies and procedures, and are paid on the same day except for second-shift warehouse employees who receive their checks a day earlier. All employees have access to two employee bulletin boards, are entitled to the same employee discount, and are allowed to use the lunchroom/break area. Unlike the drivers who are not required to clock out for lunch and take their lunch whenever they can during the day, warehouse employees must clock out for lunch.

One of the Employer's two back-up drivers previously worked for the Employer as a regular driver. After an absence from work for medical reasons, the employee returned to work in the warehouse and performs back-up driving, filling in for regular drivers who are out sick or on vacation as needed. This employee fills in for drivers approximately 25 days per year. The second back-up driver was hired to perform back-up driving duties at a starting rate of \$8 per hour. He thereafter became a full-time driver at \$10 per hour, was laid off, but returned to work shortly before the hearing herein as a back-up driver.

Over the last five years, one individual was hired as a warehouse employee, later became a driver, and ultimately became the manager of Warehouse Two. The record does not reflect any instances of regular drivers becoming warehouse employees without any driving responsibilities.

The Board has found separate driver units appropriate where drivers perform significantly different functions, possess different skills, work under different immediate supervision and have insubstantial interchange with other employees. *Rinker Materials*, 294 NLRB 738, 739 (1989); *Laidlaw Waste Systems v. NLRB*, 934 F.2d 898, 137 LRRM 2631 (7th Cir. 1991), enfg. 299 NLRB No. 124 (1990); *Gogin Trucking*, 229 NLRB 529, 538 (1977); *Giordano Lumber*, 133 NLRB 205, 206–207 (1961). In making its unit determinations, the Board examines community of interest factors including differences in method of wages or compensation, different hours of work, different benefits, separate supervision, degree of dissimilar qualifications, training and skills, differences in job functions and amount of working time spent away from the employment or plant situs, infrequency or lack of contact with other employees, lack of integration with the work functions of other employees or interchange with them and history of collective bargaining. *Overnite Transportation Company*, 322 NLRB 723 (1996).

The Board has often found that warehouse employees and drivers who share a sufficient community of interest may be included in the same appropriate bargaining unit, *Ives Business Forms*, 263 NLRB 286 (1982); *Institutional Food Services*, 258 NLRB 650 (1981), and if those interests are sufficiently united the Board will find separate driver and warehouse units inappropriate. *Napa Columbus Parts*, 269 NLRB 1052 (1984) (jobber delivery drivers who share a community of interest with warehouse employees must be included in warehouse unit); *Los Angeles Herald-Examiner*, 200 NLRB 475 (1972) (separate unit of truckdrivers inappropriate based on long history of bargaining in overall unit and community of interest with others in broader unit). Contrast *Memphis Furniture*, 259 NLRB 401 (1981) (separate unit of over the road drivers appropriately severed from unit where insufficient community of interest with warehouse employees).

In *Napa Columbus Parts*, where the petitioner-union sought a warehouse-only unit, the Board required the inclusion of jobber delivery drivers. The Board relied on the facts that the jobber delivery drivers were paid hourly as were the warehouse employees; received their paychecks on the same day; had a wage rate not substantially higher than warehouse employees; common supervision; the same workplace, in that jobber delivery drivers reported to work at the same platform where warehouse employees loaded their trucks for delivery, spending one to one and one-half hours daily at the loading platform; shared a breakroom, parking and other facilities; worked with employees on a daily basis, sharing the duties of loading the trucks; performed similar warehouse duties away from the warehouse of unloading trucks in the course of making their deliveries; made contact with employees in the breakroom; enjoyed the same benefit package; and had strong interchange where nine out of ten jobber delivery drivers were former warehouse employees and warehouse employees regularly substituted for jobber delivery drivers. *Napa Columbus Parts*, supra, 269 NLRB 1052.

Similarly, in *Calpine Containers*, 251 NLRB 1509 (1980), where the petitioner-union sought a unit of production and maintenance and warehouse employees in a box-making plant, the Board found the unit inappropriate without also including truckdrivers and forklift operators who worked outside of the production area, notwithstanding a bargaining history of separate units. The Board found that the petitioned-for production and warehouse employees did not have a distinct and separate community of interest that would warrant excluding drivers because drivers occasionally produced boxes in the off season, all employees punched the same time clock, were supervised by the warehouse manager, were maintained on a plantwide seniority list, were hourly paid (though drivers earned more than 50 percent higher wages), had the same break periods, and sometimes ate lunch together.

In the instant case, the drivers and warehouse employees are paid hourly; receive their checks on the same day, except for second-shift warehouse employees; share common supervision; report to the same workplace; punch the same time clock; have use of the same parking facilities and break room; enjoy the same benefits; have some history of interchange; and regularly interact in the staging area when shipping employees assist the drivers with consolidating and loading their trucks and when drivers assist warehouse employees with breaking up skids. Further, drivers return to the warehouse after each delivery and can spend approximately 50 percent of their day at the warehouse. Moreover, while out delivering merchandise to the stores, they continue to engage in warehouse-type duties of unloading merchandise at each store and communicating with the Warehouse Manager after each delivery. While their wages and overtime opportunities are greater than those of warehouse employees and they are expected to possess a CDL, which is not required of the warehouse employees who perform no driving functions, I find that the drivers' duties are well integrated into the work functions of the warehouse employees and the overall functions of the warehouses. Based on the foregoing, I find that the drivers share a substantial community of interest with the warehouse employees and thus, the warehouse employees must be included in any unit in which an election may be directed. *Napa Columbus Parts*, supra, 269 NLRB 1052; *Calpine Containers*, supra, 251 NLRB 1509.

With respect to the two back-up drivers, I find that they are dual-function employees performing both warehouse and driving work. As I find that the smallest appropriate unit consists of warehouse employees and drivers, I find that back-up drivers must necessarily be included in the unit because both of their functions are duties performed within the unit.

The Petitioner has not expressed a willingness to proceed to an election in any other unit other than the petitioned-for drivers unit. As I have found that the petitioned-for unit inappropriate without including warehouse employees and back-up drivers, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

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 **May 7, 1999**.

Signed August 27, 2003

at Philadelphia, PA

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

420-2900
440-1760-6200
440-1760-6700

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