

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

WEIS MARKETS, INC.

Employer

and

**Case 6-RC-11724**

TEAMSTERS LOCAL NO. 764 a/w  
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, a hearing was held before David L. Shepley, 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 the undersigned Regional Director.<sup>1</sup>

Upon the entire record<sup>2</sup> in this case, the Regional Director finds:

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

---

<sup>1</sup> 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. 20570-0001. This request must be received by the Board in Washington by October 8, 1999.

<sup>2</sup> Both the Employer and the Petitioner filed timely briefs in this matter which have been duly considered by the undersigned.

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)(l) and Section 2(6) and (7) of the Act.

As amended at the hearing, the Petitioner seeks to represent a unit of all full-time and regular part-time general warehouse workers, including but not limited to laborers, pickers, receivers, selectors, trailer cleaners, and warehouse clerical employees employed in the grocery, perishable, non-foods and warehouse maintenance areas, and warehouse maintenance employees employed by the Employer at its Milton, Pennsylvania distribution center and Shamrock Division; excluding all truckdrivers, jockeys, transportation department clericals, dispatchers, office clerical employees and guards, professional employees and supervisors as defined in the Act. The Employer agrees with the Petitioner that all of the classifications sought by the Petitioner are properly included in the unit. However, contrary to the Petitioner, the Employer would also include in the unit the truckdrivers, jockeys and transportation department clericals. In this regard, the Employer contends that the truckdrivers, jockeys and transportation department clericals share such a community of interest with the rest of the unit sought by the Petitioner as to require their inclusion in the unit herein. There are approximately 400 employees in the unit sought by the Petitioner. The Employer seeks to add approximately 215 truckdrivers, eight or nine jockeys and two transportation department clericals to the petitioned-for unit. There is no history of collective bargaining for any of the employees involved herein.

### The Employer's Operation

The Employer's facility at issue herein is a large distribution center, which warehouses the products sold in its 161 retail grocery stores located in Pennsylvania, New York, New Jersey, West Virginia and Maryland.<sup>3</sup> The facility totals about 1,000,000 square feet, with docks surrounding the storage areas for loading and unloading trucks. There is also a railroad spur which comes up to the warehouse building for the unloading of goods that arrive by rail. The main warehouse building is divided into three areas: grocery, perishable and non-foods. Grocery is the largest area of the warehouse facility, utilizing about 600,000 square feet, followed by perishable. The non-foods area is the smallest section of the building. Trailer cleaning and fleet maintenance<sup>4</sup> are each done in separate locations on the same property as the warehouse. Each of the three areas of the warehouse as well as the trailer cleaning area have their own supervisors.

The basic operation at the warehouse begins with goods being received at the docks of the various areas. Goods can be received either from outside vendors, from railroad cars or from the Employer's own trucks, which transport goods from the Employer's long-term storage facility located about ten miles away in Northumberland, Pennsylvania. In addition, the Employer's drivers sometimes bring backhauls, which involve the drivers picking up a new load after the delivery is made to a store so that the driver does not return to the facility with an empty truck.

Upon their arrival, the goods are offloaded from the trucks or railroad cars and placed just inside the warehouse door. The warehouse receivers count and inspect the products, fill out the driver's paperwork, and send the driver to the warehouse clerk to turn in the papers.

---

<sup>3</sup> The majority of the Employer's stores are located in Pennsylvania.

<sup>4</sup> At the hearing, the parties stipulated, and I find, that the fleet maintenance employees are excluded from the unit inasmuch as they do not share a community of interest with the petitioned-for employees.

The products are then moved into the storage area of the warehouse by operators utilizing forklifts and power jacks or carts and conveyor belts.

When goods are to be shipped out, the warehouse employees receive the computer generated paperwork detailing what goods are to be loaded onto a given truck. The selectors pick out the products and bring them to the dock area to be loaded. Some departments use power equipment to do this and some do not. The paperwork is then turned in to the office. After review of the papers in the office, they are given to the drivers to deliver to the stores.

The largest of the Employer's departments, grocery, employs about 190 employees, including receivers, selectors, forklift operators, laborers, maintenance men and clericals. Their work is overseen by Rich Sands, Director of Distribution; Butch Sprengle, Grocery Operations Manager; John Wendt, Grocery Distribution Manager; Dave Persing, Grocery Foreman; and five grocery supervisors.<sup>5</sup> The grocery area has about 65 doors opening to the dock. This area stores all non-refrigerated grocery items, such as canned goods, peanut butter and so forth. There is a warehouse maintenance area inside of the grocery area. There are also two offices in the grocery area, one on the first floor for the grocery department and one on the second floor for the transportation department. In addition, there is a break room on each of the two floors of the grocery area. The downstairs break room contains vending machines and is utilized by the warehouse employees. The upstairs break room is utilized by the drivers and sometimes by the jockeys.

The employees of the grocery department work three shifts, six days a week. The daylight shift has slightly more employees than the other two shifts.<sup>6</sup> There is parking near the grocery area. The warehouse area is laid out in aisles, where the products are stored. The

---

<sup>5</sup> At the hearing, the parties stipulated, and I find, that all of the management personnel and supervisors listed in this department, as well as in the other departments yet to be described herein, are supervisors within the meaning of Section 2(11) of the Act, inasmuch as they have the authority to discipline employees and to assign and direct the work of employees.

<sup>6</sup> According to Sands, there are 75 to 80 employees on the first shift, 50 to 60 employees on the second shift and 40 to 50 employees on the third shift.

grocery employees use forklifts and power jacks to store, pick and move the products to and from the dock area.

Immediately adjacent to the grocery department is the non-foods department.<sup>7</sup> This is a much smaller department, employing about 50 employees, which utilizes about one third of the warehouse space as is used by the grocery department. There are about 12 dock doors in this area. The non-foods department is overseen by Sands, Melanie Anselmo, Non-Foods Manager, and one supervisor.<sup>8</sup> The non-foods department, as the name suggests, stores such items as health and beauty aids, bug spray, cleaning products, light bulbs, and so forth. There is also a separate pharmacy warehouse area in non-foods, which is kept locked due to the nature of the goods stored there. There is no office or break room in the non-foods part of the warehouse.

The classifications of employees in non-foods are basically the same classifications as those who work in grocery, such as pickers, receivers, laborers, and so forth. This department only works two shifts, daylight and afternoon, from Monday to Friday. There is parking adjacent to the non-foods area of the warehouse. In non-foods, the products are not transported by power equipment, as they are in grocery. Rather, the products are on racks which are angled, and the employees pick out the products and move them in baskets and conveyor belts to the dock areas.

Another very large area of the warehouse houses the perishable department. This department is subdivided into freezer, fresh produce and dairy/deli. There are about 120 employees and 95 dock doors in the perishable department. Physically, the perishable department juts out at a right angle from the grocery section of the building and adjoins that section only by a hallway. The employees in the perishable area, which again are the same basic job classifications as the employees in grocery and non-foods, are overseen by Sands;

---

<sup>7</sup> The non-foods department is sometimes referred to as the Shamrock Division.

<sup>8</sup> See footnote 5.

Joe Kleman, Perishable Distribution Manager; Aaron Garrison and Eric Hudson, Perishable Distribution Assistant Managers; Marlin Persing, Dairy Foreman; and five supervisors.<sup>9</sup> There is one office in the perishable area, and three break rooms, one on the first floor, one on the second floor and one in the freezer area. There are parking spaces near the perishable area of the facility.

The floor area closest to the grocery warehouse is the freezer area, which utilizes about one half of the perishable floor space. Because of the temperature, the door between the grocery and the freezer area is usually kept closed, unlike all of the other departments, which flow from one to the other without closed doors. The employees in the freezer area work only on the daylight shift.<sup>10</sup>

The next area, adjacent to the freezer area, is the produce section, which utilizes about one third of the perishable floor area. All fruits, vegetables and other fresh foods which require refrigeration are stored in this area. The employees have staggered shifts throughout the day; at night there are about 50 different schedules for 60 employees.

The third, and physically smallest area in perishables, is the dairy/deli area, which houses such items as milk, hot dogs, cheese, bacon, and so forth. The employees in this area work one daylight shift.

Bread is yet another type of product that is warehoused at this distribution center. Bread is handled somewhat differently than the other types of products inasmuch as it is not stored in the warehouse. Trucks bring the bread to the facility, where it is unloaded onto the dock area in the grocery department. The bread is then reloaded onto trucks for delivery to the stores. There are about 14 laborers or pickers who handle the bread, supervised by Sands and Joe Kleman. The employees who handle the bread work five days a week, Sunday, Monday,

---

<sup>9</sup> See footnote 5.

<sup>10</sup> The record does not reflect how many days per week the perishables employees work.

Wednesday, Thursday and Friday, on one shift beginning in the afternoon and finishing late at night.

The trailer cleaners, who the parties stipulated are warehouse employees properly included in the petitioned-for unit, work in a separate building in the parking lot opposite the grocery section of the warehouse. It is rectangular with twelve doors on each side of the building. There are about 25 trailer cleaning employees, who are supervised by Sands; Trailer Cleaning Foreman Gary Fisher; Eric Hudson from perishables; and Jeff Geedy, one of the supervisors from groceries.<sup>11</sup> The trailer cleaners work six days a week, 24 hours a day. There are four different starting times, so that the employees' shifts are staggered throughout the day and night. The trucks are brought to and from the trailer cleaning area by the jockeys.

There are two warehouse maintenance areas at the facility, one in grocery and one in perishables. There are 16 employees who work in this area, supervised by Sands and Gary Pope, Warehouse Maintenance Manager.<sup>12</sup> The maintenance employees' hours are similar to those in either grocery or perishables, depending upon the building to which they are assigned. Warehouse employees, as well as truckdrivers, bring pallets and power jacks to the maintenance department for repairs.

#### The Transportation Department

As described previously, the transportation department consists of about 215 truckdrivers, eight or nine jockeys, two clericals and two dispatchers.<sup>13</sup> The department works out of two offices, one on the second floor of the grocery area and one on the first floor of the perishable area. The employees in this department are overseen by Sands; Andy Duzick,

---

<sup>11</sup> See footnote 5.

<sup>12</sup> See footnote 5.

<sup>13</sup> At the hearing the parties stipulated, and I find, that the two dispatchers are excluded from the unit inasmuch as they lack a community of interest with the employees in the petitioned-for unit. Further, the parties stipulated that the transportation department clericals would be included in the unit only if either the truckdrivers or the jockeys were included.

Director of Logistics and Transportation; Bill Keen, Director of Driver Training and Safety; and Steve Rowe, Assistant Director of Driver Training and Safety.<sup>14</sup> The clericals, or clerks, in this department work only a daylight shift. The jockeys work all three shifts, roughly the same hours as the employees working in the warehouse. The drivers, on the other hand, leave to make their deliveries at all different times of day and night. Their schedules are determined by the flow of goods at the distribution center. About one half of the drivers and jockeys work out of the grocery area, and the other half of the drivers and jockeys work out of the perishable area.

The schedules for the drivers are posted in the transportation office. When a given driver arrives at the facility, he checks to see if the load to be delivered has been placed on the truck. The driver fills out the paperwork for the load, then gets his truck and leaves the facility. Generally, the driver is at the warehouse from between one half hour to a few hours before leaving to make the delivery. Other than filling out the paperwork, the driver does no other type of work while waiting for the load. The drivers mainly use the break room on the second floor of the grocery area, which is where the transportation office is located. Likewise, in the perishable area, the drivers use the break room on the second floor of that area of the warehouse.<sup>15</sup>

Once the driver completes the deliveries, the truck is driven back to the Employer's facility. Sometimes the returning truck contains empty skids or merchandise which is being returned. Sometimes the driver is returning to the facility with a backhaul which needs to be unloaded. In addition, each week, one or two drivers are sent to the Employer's long term storage facility to bring back a load of goods to be put in the warehouse.<sup>16</sup> Whenever a driver

---

<sup>14</sup> See footnote 5. In addition to the supervisors described in the transportation department, the drivers sometimes work with Eric Hudson, an assistant director of the perishable area.

<sup>15</sup> In both the grocery and the perishable areas, the warehouse employees use the first floor break rooms. These break rooms on the first floor contain the vending machines, so the drivers do go into the first floor break rooms to buy snacks. However, the warehouse employees do not use the second floor break rooms used by the drivers.

<sup>16</sup> In its brief, the Employer argues that because the driver unloads the truck when bringing goods from the long term storage facility, this demonstrates the community of interest and functional integration between the truckdrivers and the warehouse employees. I find this argument unpersuasive. This unloading is only done on a weekly basis by one or two out of a total of 215 truckdrivers, which is less than one percent of the total number of drivers. Thus, I find this task to be so minimal in relation to the

returns with something to be unloaded, the truck is pulled up to the dock area. The driver gives the paperwork to the warehouse employees, and the truck is unloaded by the laborers in the warehouse. Upon their return to the facility, the drivers turn in their paperwork to the clericals, whether the truck returned empty or with merchandise to be unloaded.

Most of the truckdrivers, about ninety-five percent, began their employment as warehouse employees. The Employer rarely hires drivers from outside of the facility. If a warehouse employee is interested in becoming a driver, the employee puts his name on a list for consideration. The drivers are required to have a commercial drivers license (CDL). If an opening occurs and the warehouse employee whose name is first on the list does not have a CDL, he will be bypassed. If a warehouse employee has the CDL and accepts the driver position, he is generally sent to a driving school which lasts about four and one half weeks. These students attending the driving school often continue to work part-time in the warehouse until the course is completed, at which time they cease receiving warehouse assignments and work full-time as a driver. The new drivers are given three weeks in which they can change their minds and return to their former positions in the warehouse.<sup>17</sup> The drivers are paid hourly, as are the warehouse employees. However, the drivers have a different pay scale for their classification.

In a few cases, truckdrivers have lost their licenses or had health problems so that they can no longer drive the trucks, and the Employer has reassigned the drivers in question to the warehouse. Additionally, there have been occasions, although not on a regular basis, where drivers have been given short term assignments to assist with warehouse work.

The drivers interact briefly with the warehouse employees when they pick up their loads, and if they bring merchandise back to be unloaded. They also interact briefly with the warehouse clerks when they turn in their paperwork, pick up their checks, or call in to get their

---

truckdrivers' overall duties as to have no effect on my decision to exclude them from the petitioned-for unit.

<sup>17</sup> This has only occurred three times in the past, according to Sands.

schedules at times when the transportation department clericals are not present. In addition, the drivers sometimes interact with the trailer cleaners when their trailers are being cleaned, or with the maintenance employees if they bring back a power jack for repairs.

The task of the jockeys is to move the trailers from building to building. The jockeys take the tractor trailers to the grocery, non-foods or perishables docks to be loaded. Sometimes the jockeys also move them out from those areas after loading if the truckdriver is not ready to leave the facility and the dock space is needed to load another truck or to receive a delivery. They also move the tractors and trailers to and from the trailer cleaning building. The jockeys never have occasion to leave the facility, but spend most of their time outdoors.

The jockeys carry radios with which they communicate with the warehouse employees and the transportation supervisors. The jockeys seal the trailers when the loading is complete, and sometimes interact with the laborers who load the merchandise to verify what is in the trailer. Every department has a need to call the jockeys on the radio or to speak with them face to face at times, to give instructions as to what needs to be moved around the buildings. The trailer cleaners also sometimes interact with the jockeys, who move the trailers to and from their building. The jockeys receive and return paperwork on a regular basis to the clericals in the warehouse.

Although some of the jockeys have a CDL, this is not a requirement of the position. Some of the jockeys with CDLs occasionally drive a load, when an extra driver is needed. Four of the jockeys used to be truckdrivers. The jockeys are paid an hourly rate which is lower than the rates paid to drivers and which is a different scale from the warehouse employees. The jockeys work the same shifts as the warehouse employees in the grocery and perishable areas, depending at which area they are working. They pick up their assignments at a desk in either grocery or perishable. The jockeys use all of the break rooms in the facility, including the ones used by the drivers.

### The Appropriate Unit

As previously stated, the Employer, contrary to the Petitioner, contends that the truckdrivers, jockeys and transportation department clerks must be included within the petitioned-for unit. The Employer argues that the unit sought by the Petitioner is not appropriate, and that the only appropriate unit would include the above-described classifications. In so arguing, the Employer asserts that the truckdrivers and jockeys share a significant community of interest and are functionally integrated with the unit requested by the Petitioner.

The Board discussed its position regarding appropriate units at length in Overnite Transportation Company, 322 NLRB 723 (1996). In that case, the Employer sought to include mechanics in a unit of drivers and dock workers requested in the petition. The Employer argued that the mechanics shared a sufficient community of interest to require their inclusion in the petitioned-for unit. The Board stated that it is well-settled that employees of an employer may be appropriately grouped in more than one way for the purposes of collective bargaining, and the Board's policy is to consider only whether the petitioned-for unit is appropriate. "There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be 'appropriate.'" Overnite Transportation Company, supra, quoting Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950), enfd. on other grounds 190 F.2d 576 (7<sup>th</sup> Cir. 1951).

Thus, a union is not required to seek the largest or most comprehensive grouping of employees, so long as the unit requested is an appropriate one. Overnite Transportation Company, supra. In the instant case, the parties agree that the classifications sought to be included in the unit are appropriate in that they all share a community of interest. With regard to the truckdrivers and jockeys, however, I find that they do not share such close community of interest with the employees sought in the petition as would mandate their inclusion in the petitioned-for unit.

The Board weighs various factors when analyzing community of interest, including the following: methods of wages or compensation; hours of work; employment benefits; supervision; job qualifications, training and skills; job functions and amount of working time spent away from the site; contact with other employees; integration of job function and interchange with other employees; and history of bargaining. Overnite Transportation Company, supra, at 724, quoting Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

With regard to the truckdrivers, the record reveals that they report to the transportation department management, in an office separate from the warehouse employees' office. The drivers have a separate wage scale from the warehousemen. The drivers work completely different shifts from the warehouse employees, leaving at all times of day and night. They spend the majority of their time away from the facility making deliveries. While the drivers have some contact with the warehouse employees while waiting for loads or upon their return to the facility, such contacts are brief and minimal. During the times that drivers are waiting for their loads, they do not perform warehouse work. The drivers even utilize separate break rooms from the warehouse employees. There have been occasions where drivers have worked as warehousemen; however, these instances are temporary and infrequent, and only occurred with a small percentage of drivers.<sup>18</sup> There is no evidence that warehousemen have ever filled in as drivers. The drivers, unlike other employees, are required to possess a CDL and to maintain a driver's license as a condition of employment, which is not required of the employees in the petitioned-for unit.

Likewise, the jockeys do not share such a close community of interest with the warehouse employees as would require their inclusion in the petitioned-for unit. Like the truckdrivers, the jockeys report to the transportation department management for their

---

<sup>18</sup> In its brief, the Employer emphasizes that on 159 days beginning in 1997 there was evidence that a driver did warehouse work. However, as pointed out by the Petitioner in its brief, that number is exceedingly small inasmuch as there are 215 drivers working five or six days each week. Thus, over almost three years, the number of days in which a driver did warehouse work is not so significant as to require a finding of regular and frequent interchange between the truckdrivers and the employees in the petitioned-for unit.

supervision. While the jockeys have some contact with the warehouse employees and trailer cleaners in the course of moving the trucks, this contact is minimal and frequently occurs only by radio.<sup>19</sup> The jockeys have their own wage scale separate from the warehouse employees. They spend most of their time outdoors at the facility, unlike the other employees in the petitioned-for unit. Also unlike the other unit employees, the jockeys use the break rooms used by the drivers. Additionally, unlike the warehouse employees, the jockeys must possess a driver's license and have, on occasion, filled in as a truckdriver.<sup>20</sup> There is no record evidence that jockeys ever fill in for warehousemen or that they perform warehouse work if they are not busy as a jockey.

Based on the above and the record as a whole, I find that the truckdrivers and jockeys do not share such a close community of interest with the employees sought in the petition as would mandate their inclusion in the petitioned-for unit. As described above, there are many factors which distinguish these classifications from the requested warehouse employees.<sup>21</sup> While a unit including truckdrivers and jockeys with the warehouse employees might be an appropriate unit, the unit sought in the petition, excluding truckdrivers and jockeys, is also appropriate.<sup>22</sup> The Board has frequently found a separate unit of truckdrivers to be an

---

<sup>19</sup> In its brief, the Employer suggests that the trailer cleaners may be more functionally integrated with the drivers than with the other employees in the requested unit. I do not agree. There is no record evidence that the trailer cleaners have any contact at all with the truckdrivers. While the trailer cleaners have some contact with the jockeys, this contact is brief and often done by radio rather than in person. Moreover, the trailer cleaners are administratively part of the warehouse department, not the transportation department. Their work involves no driving, while this is the main function of the truckdrivers and jockeys. Thus, I do not find that the trailer cleaners are functionally integrated with the truckdrivers or the jockeys.

<sup>20</sup> Although not required, some of the jockeys also possess a CDL, which is necessary to drive the trucks.

<sup>21</sup> In its brief, the Employer emphasizes that the truckdrivers and jockeys share a number of the same terms and conditions of employment as the employees in the unit sought, including the same personnel department, identical benefits, the same personnel policies, the same forms to be signed upon hire, and paychecks from the same payroll company. I find these facts unpersuasive, inasmuch as all of the employees of the Employer, not only the employees in the requested unit, have these factors in common.

<sup>22</sup> In its brief, the Employer cites Overnite Transportation Company, supra; Institutional Food Services, 258 NLRB 650 (1981); American Sunroof Corporation, 243 NLRB 1128 (1979); and The Brescome Distributors Corp., 197 NLRB 642 (1972), in support of its contention that warehousemen and drivers

appropriate unit. See, e.g., Cal-Maine Farms, Inc., 249 NLRB 944 (1980); Pacesetter Corporation, 241 NLRB 1150 (1979); Arkley Lumber Co., 169 NLRB 1098 (1968); St. John's Associates, Inc., 166 NLRB 287 (1967); Mc-Mor-Han Trucking Co., Inc., 166 NLRB 700 (1967). The Board has repeatedly held that “[I]t is not the Board’s function to compel all employees to be represented or unrepresented at the same time or to require that a labor organization represent employees it does not wish to represent, unless an appropriate unit does not otherwise exist.” Overnite Transportation Company, supra, at 724, quoting Mc-Mor-Han Trucking Co., Inc., supra. It is well settled that more than one appropriate bargaining unit can exist in any particular factual setting. Overnite Transportation Company, supra, and cases cited therein.

Thus, since the facts herein do not reveal such a close community of interest between the truckdrivers and jockeys and the general warehouse workers as would render the requested unit inappropriate, I find that a unit limited to the general warehouse workers and excluding truckdrivers, jockeys and transportation department clericals<sup>23</sup> is an appropriate unit.

---

have been included in units together when they share a community of interest. I find these cases not to be controlling herein. In each of the cases cited by the Employer, the Petitioner had requested a unit that included drivers and warehousemen, and the issue in each of those cases was not whether the drivers could appropriately be excluded from the requested unit as is the issue in the instant case.

The Employer also relies on Levitz Furniture Company of Santa Clara, Inc., 192 NLRB 61 (1971) in support of its position that the truckdrivers and jockeys must be included in the petitioned-for unit. I find this case to be distinguishable from the instant one. In Levitz, there were 4 truckdrivers and 4 helpers in a potential unit of 105 employees. The truckdrivers and helpers spent only sixty to sixty-five percent of their time driving, and spent the balance of their day performing work in the retail store or in the warehouse, including loading and unloading the trucks. They also performed warehouse duties on their days off and on Sundays. There were also occasions where truckdrivers sold merchandise in the retail store. The truckdrivers and helpers were supervised by the same manager who supervised the warehouse employees. Further, several of the employees in classifications in the retail store and in the warehouse performed the work regularly performed by the truckdrivers and helpers. The truckdrivers needed no special license. Moreover, when drivers were on vacation, their work was performed by warehouse or other employees. Id. at 62. Thus, I find that Levitz is inapposite to the facts of the instant case.

<sup>23</sup> The parties stipulated, and I find, that the transportation department clericals would be included in the unit only if either the truckdrivers or the jockeys were included. Inasmuch as I am excluding the truckdrivers and the jockeys from the unit, I shall also exclude, on the same basis, the transportation department clericals. See footnote 13.

Accordingly, I find that 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 general warehouse workers, including but not limited to laborers, pickers, receivers, selectors, trailer cleaners, and warehouse clerical employees employed in the grocery, perishable, non-foods and warehouse maintenance areas, and warehouse maintenance employees employed by the Employer at its Milton, Pennsylvania distribution center and Shamrock Division; excluding all truckdrivers, jockeys, transportation department clericals, dispatchers, fleet maintenance employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION**

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>24</sup> Eligible to vote are those employees in the unit who were employed during the payroll period 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 employees who have quit or been discharged for cause since the designated payroll period and 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,

---

<sup>24</sup> Pursuant to Section I03.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>25</sup> Those eligible shall vote whether or not they desire to be represented for collective bargaining by Teamsters Local No. 764 a/w International Brotherhood of Teamsters, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 24th day of September 1999.

/s/Gerald Kobell

---

Gerald Kobell  
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD  
Room 1501, 1000 Liberty Avenue  
Pittsburgh, PA 15222

420-5000-0000-0000  
420-7303-0000-0000  
440-1760-6260-0000  
440-1760-6720-0000

---

<sup>25</sup> In order to assure 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 the election eligibility list, containing the full names and addresses of all 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. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before October 1, 1999. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.