

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

DETROIT METRO TAXICAB ASSOCIATION, INC.

Employer

and

CASE 7-RC-21567

LOCAL 243, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO

Petitioner

APPEARANCES:

Jacob S. Ghannam, Attorney, of Detroit, Michigan, for the Employer  
Andrea F. Hoeschen, Attorney, of Milwaukee, Wisconsin, for the Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, 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,<sup>1</sup> 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.

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<sup>1</sup> The Petitioner filed a brief which has been carefully considered.

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 Sections 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of approximately 60 non-owner taxicab drivers employed out of the Detroit Metro Taxicab Association, Inc. (hereinafter DMATA) facility located in Romulus, Michigan. The Petitioner primarily argues that DMATA is the sole employer of the petitioned-for employees and alternatively argues that DMATA is a joint employer of the drivers with 106 independent taxicab owners. DMATA maintains that it does not employ the petitioned-for drivers and moreover that the drivers are not employees within the meaning of Section 2(3) of the Act, but rather are independent contractors.

DMATA's membership consists of 106 independent taxicab owners in and around the Detroit metropolitan area. The elected president of DMATA, John Mathai, is a taxicab owner and member of the DMATA Board of Directors<sup>2</sup>. DMATA's Board of Directors consists of seven taxicab owners all of whom are members of DMATA. For many years DMATA has maintained a concessionaire contract with Wayne County for airport taxi transportation out of the Detroit Metropolitan Airport to the surrounding Detroit and Detroit metropolitan areas. The current contract is effective March 1, 1998 to February 29, 2003. Under the terms of the contract, DMATA has the "exclusive privilege and obligation to provide metered taxicab services to passengers and the traveling public at the airport". DMATA does not own any of the airport taxicabs. Rather, the cabs are owned by the 106 individual owners. In order to operate a taxicab at the airport, the owner must have a bond plate. Under the terms of the concessionaire agreement, Wayne County has set a limit as to the number of bond plates in existence at 106. Thus, if an owner who is not presently operating at the airport is interested in operating there, the owner would have to purchase a bond plate from one of the 106 existing owners. Once an owner begins operation of his cab at the airport, he becomes an automatic member of DMATA. All airport taxicabs are identified by a "Detroit Metro Airport Taxi" sign, which is the responsibility of the cab owners. Under the terms of the concessionaire contract, flat cab rates are set by Wayne County for transportation services out of the airport. DMATA's facility is located in Romulus, Michigan near the airport and there are limited services for owners and drivers provided at the Romulus facility.

DMATA's payroll consists of two full-time dispatchers, one part-time dispatcher, one assistant part-time dispatcher and one office assistant. Their wages are paid through association dues paid by the owners at the rate of \$100.00 per month. The dispatchers work inside the airport terminal. They interact with the cab drivers in that they notify the drivers if a

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<sup>2</sup> Mathai is also a driver; he is not on DMATA's payroll.

cab is needed at a certain airport terminal;<sup>3</sup> they record any customer telephone calls relating to cab drivers; and they process all credit card transactions for taxi services.<sup>4</sup> Regarding credit card transactions for cab fares, the record indicates that after the transaction is processed, DMATA issues a check to the driver in the amount of the fare less a nominal processing fee.

There are currently about 60 cab drivers working out of the airport. DMATA does not directly employ any of these drivers. The drivers either work for one or more of the 106 cab owners or they are themselves both the driver and the cab owner. DMATA also does not employ any of the cab owners.

Under the terms of the concessionaire contract, the drivers are required to possess a “personal vehicle” (pv) license to operate a taxicab at the airport. Applications for a pv license are kept by DMATA at its Romulus facility as well as at the Wayne County offices. Once an application is completed by an owner or driver, DMATA is responsible for processing the application, including completing a driving and criminal history check on the applicant. The processing fee charged to the applicant by DMATA for these services is \$10.00. Although the record is unclear as to what happens with the application once it is processed by DMATA, it appears that DMATA forwards the application on to Wayne County for issuance of the pv license.

Drivers are hired by the individual cab owners and the compensation arrangements between the drivers and owners are determined verbally on an individual basis. The record indicates that the most common type of compensation arrangement between the driver and owner is a daily “lease” arrangement<sup>5</sup> whereby the driver keeps 50 percent of what his total daily earnings are minus gas expenditures and tips, with the remaining 50 percent going to the owner.<sup>6</sup> The driver is responsible for keeping a daily trip sheet documenting runs made.

Under the terms of the airport concessionaire contract, the owners are required to carry workers compensation insurance for any drivers who drive their taxicabs. The owners do not

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<sup>3</sup> The taxicabs are stationed at three airport terminals: the International terminal, the North terminal (including Northwest Airlines) and the South terminal (including American Airlines, Delta Airlines and all other airlines).

<sup>4</sup> The record also indicates that on occasion the dispatchers will get calls from customers outside of the airport requesting cab service to the airport. In these cases, the dispatcher will place a general call to the drivers. However, as it is against the terms of the concessionaire contract for the drivers to provide cab service anywhere other than out of the airport, the drivers who decide to accept such service do so at their own risk.

<sup>5</sup> While both parties refer to the compensation arrangement between owner and driver as a leasing arrangement, it is clear from the record that no leasing fee is charged to the driver by the owner and the pay arrangement is based on a split commission structure and not a leasing arrangement within the Board’s meaning of this term.

<sup>6</sup> The record also indicates that some of the owners and drivers have weekly or monthly lease arrangements for the compensation of drivers. However, the record is not clear as to the parameters of these pay structures.

provide any health insurance<sup>7</sup> or other benefits and do not deduct any taxes for drivers. Rather, the drivers are responsible for their own tax as well as social security withholdings. The owners are solely responsible for maintenance of their taxicabs including vehicle repairs, insurance and taxes. There is a dress code for drivers provided in the concessionaire contract and drivers are required to wear blue or black pants, a white or blue shirt and black shoes. Taxicabs in use are parked in a staging area at the airport maintained by Wayne County. There is a small shelter area in the staging area with restrooms and a sitting area for drivers.

Regarding the hours worked by the drivers, the record is conflicting as to whether any of the drivers' hours are scheduled by the owners. It appears that the part-time drivers work on an as-needed basis, whenever the cab is available and the owner is not driving it himself. There is limited evidence that some of the full-time drivers work a regular weekly schedule established by the owner. However, the record further demonstrates that this schedule can be varied by the driver at any time.

The contract between DMATA and Wayne County provides for certain rules regarding the operation of taxis out of the airport. For example, drivers who refuse short local runs, overcharge customers, and verbally abuse customers receive an automatic 72-hour suspension. Complaint forms are kept inside each taxicab, with the DMATA dispatchers, and at DMATA's office. Complaints against drivers can be filed by customers or other drivers.<sup>8</sup> All driver complaints are forwarded to DMATA which then contacts the appropriate cab owner and schedules a disciplinary hearing to determine whether the driver is in violation of the contract rules. The disciplinary hearing is attended by the DMATA Board of Directors, the driver and sometimes the owner. The DMATA Board of Directors determines whether a driver will be disciplined and the extent of the discipline in accordance with the concessionaire contract. In this regard, DMATA is monitored by Wayne County regarding the discipline of drivers for contractual rule violations.

With respect to the non-owner drivers there exists the preliminary issue of whether these individuals are employees within the meaning of Section 2(3) of the Act or whether they are independent contractors. In making this determination, the common law agency "right of control" test applies:

Where the one for whom the services are performed retains the right to control the manner and means by which the results are to be accomplished, the relationship is one of employment; while, on the other hand, where control is reserved only as to the result sought, the relationship is that of an independent contractor. The resolution of this question depends on the facts of each case, and no one factor is determinative. ***Yellow Cab of Quincy, Inc.***, 312 NLRB 142, 143-144 (1993) and cases cited therein.

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<sup>7</sup> The record indicates that drivers are eligible for subsidized health insurance offered through Wayne County. The owners do not share in the payment of any premiums.

<sup>8</sup> DMATA does not handle any complaints by drivers against owners.

More specifically, when examining whether taxicab drivers are independent contractors or employees, the Board considers: (1) whether the employer controls the drivers' means and manner of operation after leaving the garage; and (2) whether there is any correlation between the employer's income and the amount of fares collected by the drivers. *Yellow Cab of Quincy, Inc.*, supra at 144, citing *Checker Cab Co.*, 273 NLRB 1492 (1985).

In the instant case, the individual cab owners hire the drivers and provide their workers compensation insurance. The cab owners own the taxicabs. They are additionally responsible for all expenses associated with the maintenance of the cabs, including insurances, licenses and vehicle repair. Although the drivers decide, to an extent, what hours they will work, the owners regulate when their cab will be on the road and allow the driver to drive the cab only when it is not being driven by the owner himself. The record demonstrates that, for the most part, the owners drive the cabs during the daytime hours and release the cabs to the drivers during the evening hours. Thus, the drivers cannot on their own determine what hours and days they will work. Moreover, some of the full-time drivers appear to have their hours set by the owner of their cab. The owners' control over drivers' hours is another indication that the drivers are employees, rather than independent contractors. *Yellow Cab of Quincy, Inc.*, supra at 145, and cases cited therein.

The drivers clearly perform an essential part of the owners' business. The business of the owners is providing transportation out of the airport to the public and its taxicabs and drivers perform that function. Driving is not merely an essential part of the owners' business, it is the owners' business. While on duty, the drivers perform no other work. While theoretically they may have the ability to do other work, the intent of all parties is that while on duty the drivers exclusively drive under the supervision of DMATA's dispatchers.<sup>9</sup> The drivers can be fined for refusing short local runs, overcharging customers, and verbally abusing customers. See, *Prime Time Shuttle International, Inc.*, 314 NLRB 838, 840 (1994).

In the instant case, the drivers do not pay any lease fee and have no capital investment in the cabs they drive. The owners require the drivers to maintain trip sheets and mandate an extensive system, through the concessionaire contract, of flat-rate fares the drivers must charge. The fares are submitted to the owner at the end of each shift and the owner keeps 50 percent of the gross sales before returning the remainder to the driver. Thus, based on the split commission structure, the owner has a direct financial stake in the amount of fares collected by the drivers. See, *Metro Cars, Inc.*, 309 NLRB 513, 516 (1992); *Yellow Taxi Company of Minneapolis*, 262 NLRB 702 (1982). This system of payment imposed by the owners, results in a direct correlation between the owners' incomes and the amount of fares collected by the

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<sup>9</sup> Although the drivers are, to an extent, on their own once they obtain possession of the cab from an owner and are free to prospect for fares when and where they choose, this is "inherent in the nature of the work" and is therefore not of special significance. *Yellow Taxi Company of Minneapolis*, 249 NLRB 265, 280 (1980). While the drivers may be free to decline dispatch orders, they are in reality dependent upon that system for it is their primary supplier of business. See, *Yellow Taxi Company of Minneapolis*, 262 NLRB 702 (1982).

drivers, thus substantially limiting the drivers' entrepreneurial opportunities and strongly indicating that drivers are statutory employees. *Yellow Cab of Quincy, Inc.*, supra at 144; *Prime Time Shuttle International, Inc.*, supra.

Although there are various relevant factors which indicate a degree of freedom by the drivers such as the absence of any fringe benefits (besides workers compensation insurance) and driver responsibility for their own tax and social security withholdings, I find that these factors are not determinative of independent contractor status and are outweighed by the factors delineated above, which indicate that the individual cab owners exercise a considerable degree of control over these drivers, and which warrants the conclusion that they are employees of the cab owners within the meaning of the Act. See, *Yellow Taxi Company of Minneapolis*, 249 NLRB at 280.

Having found the drivers to be employees of the individual cab owners, there remains the issue of whether DMATA and the individual cab owners are joint employers. The Petitioner has specifically declined to seek certification as to the employment relationship between the cab owners and the drivers since it is unlikely that any of the cab owners individually satisfy our jurisdictional standards. The Board finds that a joint employer relationship exists when two or more employers "co-determine those matters governing essential terms and conditions of employment." *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117 (3d Cir. 1982); *W. W. Grainger, Inc.*, 286 NLRB 94 (1987). The essential factor to be examined is whether one employer possesses sufficient control over the work of the employees of another employer. *Boire v. Greyhound Corp.*, 376 U.S. 473, 481 (1964). "There must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision and direction." *Laerco Transportation*, 269 NLRB 324 (1984).

There is no evidence that the cab owners make any investigation of the drivers' qualifications or an independent appraisal of their abilities. Instead, it appears that DMATA is responsible for processing the drivers' pv license application, including completing a driving and criminal history check on the applicant. Moreover, DMATA has final authority to discipline and suspend the drivers without consultation with the individual cab owners, again suggesting that DMATA shares and co-determines the drivers' working conditions. *C.R. Adams Trucking, Inc.*, 262 NLRB 563 (1982).

Representatives of DMATA exercise authority over the drivers' day-to-day activities. While the record shows that the individual cab owners set driver hours, the DMATA dispatchers direct the drivers to specific pick-up points. Consequently, DMATA's exercise of daily direction over the drivers via the dispatchers is more than routine in nature. *DiMucci Construction Co.*, 311 NLRB 413, 418 (1993); *American Air Filter Co.*, 258 NLRB 49, 52 (1981).

I conclude, therefore, that DMATA's exercise of daily direction over the drivers, coupled with an authority to discipline the drivers, gives rise to the level of sufficient control of essential terms and conditions of employment necessary to find that a joint employer status exists. It is not necessary that the Petitioner also seek certification as to the cab owners and the drivers. See *Central Transport*, 306 NLRB 166 (1992); *American Air Filter*, supra.

5. Accordingly, for the reasons stated above, and based on the record as a whole, 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>10</sup>

All full-time and regular part-time drivers employed by Detroit Metro Taxicab Association, Inc. and working out of the Detroit Metro Taxicab Association, Inc. facility located at 18916 Middlebelt Road, Romulus, Michigan; but excluding all cab owners, guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached direction of Election.

Dated at Detroit, Michigan, this 9<sup>th</sup> day of June, 1999.

(SEAL)

/s/ William C. Schaub, Jr.  
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<sup>10</sup> Although not raised by the parties at hearing, I find that the appropriate eligibility formula for regular part-time drivers under these circumstances is those drivers who average four hours or more of work per week in the calendar quarter immediately preceding the date of this Decision. *Metro Cars*, supra at 516; *Tri-State Transportation Co.*, 289 NLRB 356, 357 (1988). Those individuals who do not satisfy this formula will be ineligible to vote as set forth herein as irregular or casual employees.