

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

ALLIANT FOOD SERVICE, INC.

Employer

and

Case No. 8-RC-15851

**TEAMSTERS LOCAL UNION NO. 964 a/w
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO¹**

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,² 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.

¹ The Petitioner's name appears as amended at the hearing.

² Both parties filed post-hearing briefs which have been duly considered.

5. 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 drivers employed by the Employer at its 8000 Bavaria Drive, Twinsburg, Ohio facility, but excluding all warehouse employees, spotter-fuelers, janitors, warehouse group leaders, warehouse clerks, transportation clerks, office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act.

There are approximately 50 employees in the unit found appropriate. The Employer operates a distribution center near Twinsburg, Ohio, the only facility involved herein.

The Petitioner seeks to represent a unit consisting of drivers only.

The Employer essentially proposes a wall-to-wall unit, including drivers, warehouse workers, spotter-fuelers, janitors, warehouse group leaders, the driver leadman, warehouse clerks, and transportation clerks. The Petitioner contends that the driver leadman is a supervisor within the meaning of Section 2(11) of the Act. Contrary to the Employer, the Petitioner asserts that no compelling community of interest exists, between the drivers and the other employees, which mandates a wall-to-wall unit.

The Employer receives, warehouses and delivers dry groceries, frozen foods, refrigerated perishables, and miscellaneous supplies to restaurants, healthcare facilities and educational institutions. Substantially all of its customers are located within a 150 mile radius of the Twinsburg facility. The record establishes that 58 employees, besides drivers, are attached to the Employer's "operations" division. These include 44 warehouse employees, 2 warehouse group leaders, 3 warehouse clericals, 3 transportation clericals, 3 janitors, 2 spotter-fuelers, and 1 driver leadman.

David Lee, the Employer's Vice President of Operations, testified that the drivers are separately supervised by Transportation Manager Craig Zidow and Transportation Supervisor

Raymond Bise. The 49 warehouse workers, clericals and group leaders are supervised by Kenneth Williams, David Wonner and Joseph Canale, described by Lee as the warehouse supervisors.

A separate seniority list for the drivers is maintained by the Employer, while a separate list is kept for the warehouse employees. The Employer utilizes a bid system for assigning delivery routes to drivers. According to Lee's testimony, the bids are awarded to truck drivers by seniority. The warehouse employees cannot bid on delivery routes. The drivers' seniority list does not include the spotter-fuelers or the driver leadman, Ed Wood. The vacation schedules for the drivers are separate from other employees and is based on their driver seniority.

Lee's record testimony shows that all of the truck drivers must have a Class A license that includes a HAZMAT (hazardous material) endorsement. Drivers work either a 3 day, 13 hour schedule; a 4 day, 10 hour shift; or a 5 day, 8 hour schedule. Warehouse employees can only work a four or five day schedule.

Significantly, the drivers spend the greatest portion of their time outside the warehouse, making deliveries. Specifically, Petitioner's witness, driver Jack Bowles, testified that drivers invest approximately 30 minutes of their time, at the beginning of each shift, performing paperwork and miscellaneous duties at the warehouse facility. The truck-loading docks are an integral part of the warehouse facility. The warehouse and maintenance employees, including the six clericals, three janitors and two spotter-fuelers are all confined primarily to the Employer's warehouse premises.

Record testimony shows little, if any, interaction between drivers and warehouse employees, apart from brief social greetings. The drivers have essentially no working contact with the three janitors or the two spotter-fuelers. When a driver is absent another driver will fill-

in, according to the testimony of Vice-President Lee. Nor do drivers ever fill in for absent warehouse employees.

Lee testified that five employees have moved from their initial classification into a driver's position. These have all been permanent changes. Lee also testified that another six employees have switched from one position to another, non-driving position. There is no record evidence that drivers routinely switch positions with any other employee classification on a short-term or temporary basis.

The record indicates that drivers operate tractor trailers and are not responsible for loading their own trucks. Drivers have direct, daily contact with customers, whereas the warehouse employees do not. Drivers also maintain a daily log of their driving time via an on-board computer (CADEC) on their trucks. No such log is maintained by warehouse employees.

The day-time warehouse employees generally perform inbound receiving functions. Night-shift warehouse employees "pick" orders for the drivers. Paul Firzlaff is the day-shift warehouse group leader. William Madlerm is the night shift group leader in the warehouse. Firzlaff coordinates the inbound receiving activity on the dock. Madlerm coordinates the spotting of the drivers' trucks at the various doors on the dock.

The three transportation clerks are John Bevan, Yvonne Kelley and Eleanor Kristoff. All three work in the warehouse building. Bevan is responsible for preparing the work for the night-shift warehouse employees. Kelley and Kristoff are invoicing clerks. Doug Nevel is the "returns and refusals" clerk. Nevel's duties are to check in the drivers' returns and determine whether or not the product is still saleable. Each of these clerks has a work station, most of which are computer-equipped. All of these clerical employees are under a wage scale separate from the drivers and have non-exempt status for overtime purposes.

The Employer's two warehouse clerks are Elizabeth Gerstenslager and Holly Calhoun. Gerstenslager assigns the proper door for the inbound drivers who are unloading freight and she provides the necessary paperwork to the warehouse employees on the day-shift. These clerks both work out of an office in the warehouse. Ms. Calhoun generally assists Gerstenslager and provides customer service as well, according to record evidence. All the above clerks, plus the three janitors, are supervised by the warehouse supervisors.

Significantly, the 50 drivers enjoy their own wage scale. Drivers receive an overnight shift premium of \$1.00 per hour if they are one of the six drivers who service customers in Indiana. During those overnight trips the Employer also pays their meal expenses and lodging. Both drivers and warehouse employees can earn incentive pay, but the record demonstrates that the incentive pay for each group is based on different factors.

Finally, the work of the spotter-fuelers involves the moving of vehicles in and out of the truck docks, hooking and unhooking the trailers from the tractor units, fueling the vehicles and spotting the rigs opposite the correct doors for loading. Their shift begins at 4:00 p.m. and ends between 12:30 and 1:00 a.m. Mark Miller, the salaried router, or one of the warehouse supervisors is in charge of the spotter-fuelers. Although a spotter-fueler has made a customer delivery in rare instances when no drivers were available, Lee testified that this was an isolated instance and had not occurred recently.

The Board's role in making a unit determination is to determine "an appropriate unit" and not necessarily the "most appropriate unit." *Saltwater, Inc.*, 324 NLRB 343, 346 (1997); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Rinker Materials Corp.*, 294 NLRB 738, 739 (1989); and *Chin Industries, Inc.*, 232 NLRB 176 (1977).

P.J. Dick Contracting, 290 NLRB 150, 151 (1988) establishes that “Board inquiry pursues not the most appropriate or comprehensive unit but simply an appropriate unit. Once this unit is determined, the requirements of the Act are satisfied. The inquiry first considers the petitioning union’s proposals. If the union’s proposed unit is inappropriate, the employer’s proposals are then scrutinized.” *Ibid.* at p. 151.

In the instant case the drivers perform significantly different functions, possess different skills, work under different immediate supervision and have no temporary interchange with other employees.

The Board has long held that truck drivers comprise a functionally distinct group which may constitute a separate appropriate unit when the Union seeks to represent them separately and there is no bargaining history. *MC-Mor Han Trucking Co., Inc.*, 166 NLRB 700 (1967).³

Based on the above, I find the drivers have a separate and distinct community of interest from the warehouse employees, spotter-fuelers and clerical employees and accordingly find that a unit of drivers is appropriate in this case.

The sole remaining issue concerns Ed Wood who currently is classified as a driver leadman. During 1997 Wood also held a driver leadman position. He was promoted to the position of supervisor during 1998 but was demoted on or about December 31, 1998 to his former position of driver leadman. From early January 1999 to February 9, 1999, the date of the hearing, Wood was on short-term disability leave. Wood was salaried when he was a supervisor,

³ The fact that the Employer’s Pittsburgh, PA facility has a unit of truck drivers has no bearing in this matter. The only applicable bargaining history is that involving the petitioned-for employees. *Big Y Foods*, 238 NLRB 855 (1978). In addition, the fact that the Employer and another union stipulated to the appropriateness of a broader unit regarding the petitioned-for employees in 1996 is not a factor to be considered. *Mid-West Abrasive Co.*, 145 NLRB 1665 (1964).

but as a leadman he is hourly paid. As a driver leadman, Wood now earns \$0.50 per hour more than the top driver's rate.

The record indicates that Wood split his time as a supervisor, spending approximately 25 percent on the road with drivers, and 75 percent in the office attending to office work. When Wood was a leadman during 1997 he spent approximately half his time riding with drivers and the other half in his office doing paperwork. Because of his current leave status there is no record evidence of Wood's actual job activities during 1999, but I will assume arguendo that Wood, when he returns to work, will follow the pattern he established during 1997.

Wood's primary office duties included the monitoring of fuel consumption and reviewing the CADEC, or daily driver logs. When he was a supervisor, Wood would also answer the telephone. When Wood would accompany drivers on their routes it was primarily for the purpose of addressing delivery problems, i.e., dangerous stairways, or customer complaints. There is no indication in the record that Wood shared the driving with the driver, either when he was a supervisor or a driver leadman.

There is no record evidence that Wood could hire or fire employees when he was a driver leadman. In one instance, prior to 1998 Wood warned driver Jack Bowles that he would be written up if he did not park a tractor in its proper spot. Bowles complied. There is no evidence that Wood ever actually disciplined any employees while he was a driver leadman. Accordingly, I decline to find Ed Wood to be a supervisor within the meaning of Section 2(11) of the Act. I do not find an opposite conclusion warranted, based on the one, isolated instance of threatened discipline, occurring at an unspecified time. In addition, I do not find Wood's duties as a driver leadman to be so distinct as to require his exclusion from a drivers unit. Accordingly, I shall include him in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local Union No. 964 affiliated with International Brotherhood of Teamsters, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters 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 that may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the **full** names and addresses of all

the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by April 2, 1999.

Dated at Cleveland, Ohio this 19th day of March 1999.

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

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401-1200
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