

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

BAUMAN OIL DISTRIBUTORS, INC. AND BAUMAN DISTRIBUTING COMPANY

Employer <sup>1/</sup>

and

AUTOMOTIVE, PETROLEUM AND ALLIED INDUSTRIES EMPLOYEES UNION, LOCAL 618, affiliated with  
the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner <sup>2/</sup>

Case 14-RC-12201

**REGIONAL DIRECTOR'S  
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.<sup>3/</sup>
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 following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>4/</sup>

All full-time and regular part-time drivers<sup>5/</sup> and maintenance employees<sup>6/</sup> employed by the Employer at its Herculaneum, Park Hills and Potosi, Missouri facilities, EXCLUDING all dispatchers,<sup>7/</sup> office clerical and professional employees, guards and supervisors as defined in the Act.

**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, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election

date, and employees engaged in an economic strike that began 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

Automotive, Petroleum and Allied Industries Employees Union, Local 618, affiliated with the  
International Brotherhood of Teamsters, AFL-CIO

### ELECTION NOTICES

In accordance with Section 102.30 of the Board's Rules and Regulations, the Employer shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. These notices are to remain posted until the end of the election. Failure to post the election notices as required will be grounds for setting aside the election whenever proper and timely objections are filed. A party is estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice. As used in this paragraph, the term "working day" means an entire 24-hour period excluding Saturdays, Sundays, and holidays.

### LIST OF VOTERS

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 that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby 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 for Region 14 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, 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 at 1222 Spruce Street, Room 8.302, Saint Louis, Missouri, on or before **November 22, 2000**. 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 filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **2** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.). If you have any questions, please contact the Regional Office.

### 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 **November 29, 2000**.

Dated August 5, 2003

at Saint Louis, Missouri

/s/ Leo D. Dollard

Leo D. Dollard, Acting Regional Director, Region 14

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- 1 The Employer's name appears as amended at hearing.
- 2 The Petitioner's name appears as amended at hearing.
- 3 The Employer, Bauman Oil Distributors, Inc. and Bauman Distributing Company, is engaged in the wholesale distribution of oil and oil products.
- 4 Petitioner seeks a unit of all full-time and regular part-time drivers and maintenance employees employed at the Employer's Park Hills, Herculaneum and Potosi, Missouri facilities, excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act. The parties agree that the full-time and regular part-time drivers and maintenance employees employed at the Employer's three facilities are appropriately included in the unit. Contrary to the Employer, the Petitioner contends that tank wagon driver Russell Bange should be excluded from the unit as a supervisor or because his interests are aligned with those of management; that mechanic Robert Jackson should be excluded as a casual and that the dispatchers should be excluded as office clerical employees. There are 11 employees in the unit sought by Petitioner, 16 employees in the unit sought by the Employer and 13 employees in the unit found appropriate here.

The Employer distributes fuel, gasoline and oil lubricants to industrial, agricultural and commercial businesses and service stations. The Employer operates facilities in Herculaneum, Park Hills and Potosi, Missouri. The Herculaneum facility is located approximately 30 miles from the Potosi facility, and 35 miles from the Park Hills facility. The Potosi facility is located approximately 20 to 25 miles from the Park Hills facility. The Employer's president oversees the day-to-day operations at the three facilities and supervises all employees. The Employer employs a total of 11 drivers, including 4 transport drivers, 6 tank wagon drivers, and 1 lube driver. The transport drivers transport product from terminals to the bulk storage tanks located at each of the three facilities and deliver product to service stations and industrial customers. The tank wagon drivers deliver product from the bulk storage tanks to contract and call-in customers and the lube driver delivers lubricants to customers and other drivers. The two maintenance employees are responsible for repairing the Employer's equipment, trucks and tanks. One maintenance employee works out of the Herculaneum facility and the other maintenance employee works at the Park Hills facility. One dispatcher also works at each facility. The only other employee is a bookkeeper who works at the Herculaneum facility.

- 5 Petitioner contends that tank wagon driver Russell Bange should be excluded from the unit as a supervisor. Petitioner also argues that Bange does not share a community of interest with other unit employees because his interests are aligned with those of management. The record establishes that on October 11, 2000, the Employer removed Bange from his position as general manager of Bauman Oil Distributors, Inc. and returned him to his former position as a tank wagon driver. The president then assumed Bange's position as general manager, which is a position he held prior to Bange's promotion. The record does not reflect the length of Bange's tenure as general manager. As general manager, Bange's responsibilities included hiring and firing, dispatch, customer complaints and various other managerial duties. Since his demotion, Bange has not exercised any of the authority that he had as general manager. Rather, Bange has

performed the duties of a tank wagon driver and has performed some mechanical work on the Employer's trucks, as do other drivers. Bange's pay and benefits remained unchanged as a result of the demotion except that he will no longer receive free car insurance and his pay was converted from salary to hourly. Bange is the most senior driver and his hourly rate of pay is the same as that of another senior driver. All other benefits are the same for all employees of the Employer. Like other hourly employees, Bange is required to punch a timeclock and his schedule is the same as that of other tank wagon drivers.

As the party seeking exclusion, Petitioner has the burden of establishing that Bange is a supervisor or that his interests are aligned with those of management. Quadrex Environmental Co., 308 NLRB 101 (1992); Ohio Masonic Home, 295 NLRB 390, 393 (1989); Golden Fan Inn, 281 NLRB 226, 230 fn. 24 (1986). Petitioner rests its arguments entirely upon the fact that the Employer demoted Bange 5 days after the filing of its petition. However, the uncontroverted record evidence establishes that Bange does not presently possess any of the statutory indicia of supervisory authority set forth in Section 2(11) of the Act. Moreover, there is no evidence that Bange will resume his supervisory duties at some future date nor is there any evidence of preferential treatment. Rather, the evidence establishes that Bange has the same duties, wages, hours and terms and conditions of employment as other drivers. Accordingly, I find that Bange is not a supervisor within the meaning of the Act and that Bange shares a community of interest with the employees in the petitioned-for unit. I shall, therefore, include him in the unit found appropriate here. St. Francis Medical Center-West, 323 NLRB 1046 (1997); Chrome Deposit Corp., 323 NLRB 961 (1997); North Shore Weeklies, Inc., 317 NLRB 1128 (1995); Popular Volkswagen, 205 NLRB 441 (1973).

- 6 Petitioner contends that Robert Jackson, the Herculeum mechanic, should be excluded from the unit as a casual employee. The Employer contends that Jackson is a regular part-time employee. At hearing, Petitioner's Counsel agreed that the sole factor at issue regarding Jackson's status is the regularity of his employment. The record establishes that Jackson has worked for the Employer as a mechanic for the past 14 years and has regularly received a W-2 since 1987. Jackson does not work on a regular schedule, but receives assignments on an "as needed" basis. Jackson performs repairs on the Employer's equipment during the evenings and on weekends, as he maintains full-time employment elsewhere. The Employer's president testified that Jackson cannot reject assignments without discipline and that Jackson has never been disciplined. The Employer's payroll records establish that Jackson worked 153.50 hours during the period January 1 through April 1, 2000; approximately 184 hours from April 2 to July 1, 2000, and 130 hours during the period July 2 through September 30, 2000. During the Employer's 2-week payroll period ending August 19, 2000, Jackson worked 42 hours. He worked 39 ½ hours during the payroll period ending September 30 and 30 ½ hours during the payroll period ending October 14. No payroll records were offered for any period after October 14, 2000.

To evaluate the regularity of Jackson's employment, I find it appropriate to apply the widely used test set forth by the Board in Davison-Paxon Co., 185 NLRB 21 (1970). As the payroll records for the 2-week payroll periods ending September 30 and October 14, 2000, establish that Jackson worked at least an average of 4.65 hours per week during the 13-week period prior to the eligibility date, I find that Jackson has a sufficient regularity of employment to demonstrate a community of interest with the unit employees. I shall, therefore, include him in the unit.

Saratoga County Chapter NYSARC, 314 NLRB 609 (1994); Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997); Davison-Paxon Co., supra.

7 Petitioner contends that the three dispatchers are office clerical employees and should be excluded from the unit. The dispatchers generally answer the phones at each of the facilities and are primarily responsible for receiving orders from customers. With respect to transport orders, the dispatchers record the order on a slip of paper along with relevant pricing information and deliver those orders to the president who determines the transport drivers' routes and the invoice price for the product to be charged to the customer. The president prepares a routing slip for each driver, a copy of which is given to the dispatcher. If the transport driver has a problem on the route or at the terminal, the transport driver contacts the dispatcher by radio. The dispatcher then contacts the president to resolve the problem and relays that resolution to the driver. The transport drivers are in radio contact with a dispatcher at least once a day. With respect to orders for the tank wagon drivers, after receiving and recording the orders, the dispatchers place the orders on a bulletin board in accordance with the customer's requested delivery date. The tank wagon drivers then arrange their own routes based on their regular customers' needs and the call-in orders. The tank wagon drivers also receive pricing information from the dispatchers. During the course of the day, the dispatcher may receive call-in orders from customers who have an immediate need for product. The dispatcher then radios the driver in that customer's area and asks if the driver has sufficient time and product to make the delivery. If the driver cannot make the delivery, the dispatcher will act as an intermediary between the customer and the driver to arrange a satisfactory resolution for the customer. Due to the call-in orders, the dispatchers have frequent daily contact with the tank wagon drivers. The president routes the lube driver. If any driver has a mechanical problem during the day, the driver contacts the dispatcher who will then contact one of the maintenance employees or the president. The dispatchers also service walk-up customers who may purchase cases of oil or have propane tanks filled. As the dispatchers cannot fill the propane tanks, the dispatcher must request a driver do it. If no driver is available, the dispatcher asks the customer to leave the tank for a driver to fill at a later time. The dispatcher also receives and attempts to resolve customer complaints, as do the drivers and the president. The dispatchers occasionally prepare customer invoices, however, this is primarily the drivers' function. The dispatchers also spend approximately 25 to 30 percent of their time inputting data into the computer. The data includes invoices, inventory and reconciliations to determine if sufficient product remains in the bulk storage tanks. The dispatchers do not drive, ride or perform any work on the trucks.

Like the drivers and maintenance employees, the dispatchers are hourly paid and punch a timeclock. The dispatchers work the same schedule of 8 hours per day, 5 days per week as worked by the tank wagon drivers. The dispatchers are paid substantially less than some of the drivers and maintenance employees, but within the range of other drivers. The dispatchers and drivers have the same major medical, vacation and retirement benefits, holidays and Christmas bonus plan.

The Employer contends that the dispatchers share a community of interest with the drivers that requires their inclusion in any unit deemed appropriate. The Employer concedes, however, as it must, that the Act does not require the unit for bargaining to be the most appropriate unit, but only an appropriate unit. The duties and responsibilities of the dispatchers, involving primarily receipt of customer orders, relaying of messages and data input do not reveal such a community

of interest or degree of integration with the drivers and maintenance employees so as to render the petitioned-for unit inappropriate. Although the dispatchers have daily contact with the drivers, share the same supervision and similar schedules and benefits, the functions and duties and interests of the drivers and maintenance employees are sufficiently distinct from the dispatchers that a unit limited to the drivers and maintenance employees is appropriate. Accordingly, I shall not compel inclusion of the Employer's three dispatchers in the petitioned-for unit and I shall, therefore, exclude them from the unit. St. John's Associates, Inc., 166 NLRB 287 (1967), enf'd sub nom NLRB v. St. John's Associates, Inc., 392 F.2d 182 (2nd Cir. 1968); Leslie Metal Arts Co., Inc., 167 NLRB 693 (1967); Ballantine Packing Co., 132 NLRB 923 (1961); Ferguson-Steere Motor Company, 76 NLRB 1122 (1948).