

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION THIRTY-THREE

UMTHUN TRUCKING CO.

Employer

and

TEAMSTERS LOCAL 371, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Petitioner

and

UMTHUN TRUCKING EMPLOYEES ASSOCIATION

Intervenor

DECISION AND DIRECTION OF ELECTION

Case 33-RC-4556

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^{1/}, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{2/}

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/}

3. The labor organizations^{4/} involved claim 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/}

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:^{6/}

All full-time and regular part-time short haul truck drivers assigned to and employed at the Employer's facility located in Buffalo, Iowa, but excluding office clerical employees, dispatchers, mechanics, 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(s) 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(s) 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 371, Affiliated with the International Brotherhood of Teamsters, AFL-CIO, or Umthun Trucking Employees Association, or Neither.^{7/}

LIST OF VOTERS

In order to insure 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); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision *two* copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the *33rd Region, Hamilton Square, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602*, on or before December 29, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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 January 5, 2001.

Dated December 21, 2000
at: Peoria, Illinois

/s/

Will J. Vance, Acting Regional Director

1/ I have carefully considered the record evidence, the parties' statements and arguments on the record and the briefs filed by the Employer and Petitioner. The Intervenor did not file a brief in this matter.

2/ At hearing, the Employer moved for the dismissal of the Petition on the basis of contract bar. It further moved that the Petition be dismissed because the Petitioner would lack a sufficient showing of interest if the unit herein was found to be broader than that requested by the Petitioner. He correctly referred the initial motion to the Regional Director in that contract bar is the core issue in this matter and will be discussed and decided below. The Hearing Officer correctly denied the further motion on the basis that the showing of interest is an administrative matter to be determined by the regional office. The Hearing Officer also properly granted the motion for intervention by the Umthun Trucking Employees Association, referred herein as the Intervenor, on the basis of its contractual claims herein.

3/ The Employer is an Iowa corporation engaged in the business of interstate and local transportation of freight with offices and places of business throughout the United States, including Davenport and Buffalo, Iowa. During the past calendar year, a representative period, the Employer derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Iowa directly to points outside the State of Iowa. There are approximately twenty-four employees within the unit found appropriate herein.

4/ The parties stipulated that the Petitioner and the Intervenor are labor organizations within the meaning of the Act, and I so find.

5/ The Petitioner seeks to represent the truck drivers domiciled at or assigned to the Employer's Buffalo, Iowa facility. Contrary to the Petitioner, the Employer and the Intervenor maintain that there is no question concerning the representation of the petitioned Buffalo, Iowa truck drivers. They point to its current collective bargaining agreement as a bar to the processing of the petition herein, maintaining that the Intervenor already represents the Buffalo, Iowa truck drivers under their contract. Moreover, they contend that the petitioned unit is inappropriate and the Petition should also be dismissed on that basis.

The Petitioner maintains that the collective bargaining agreement between the Employer and the Intervenor does not cover the Buffalo truck drivers by its own terms and should fail as a bar on that basis. Moreover, the Petitioner maintains that the Buffalo truck drivers constitute an appropriate unit with its own separate identity and, as such, the Board's principles would require their self-determination in selecting their representative rather than their accretion into the existing company-wide bargaining unit.

It is clear that deciding the issue of the appropriateness of a separate unit of the Buffalo truck drivers is essential in determining whether a question concerning the petitioned employees. Accordingly, the appropriate unit issues will be discussed and determined in this section of the Decision.

BACKGROUND

As indicated above, the Employer is in the business of the interstate and local transportation of freight and materials. Aside from the disputed Buffalo, Iowa facility, the Employer operates seven terminals. Four are located in Iowa: Eagle Grove, Ft. Dodge, Mediapolis and Davenport. The remaining three are located in Hammond, Indiana; Birmingham, Alabama and Hutchins, Texas. It also maintains a sales office in Masonry, Ohio. The Employer's headquarters and administrative offices are located at the Eagle Grove facility. Payroll, sales and marketing, training and new employee orientation, safety and Department of Transportation issues and all other major administrative functions are performed at or out of the Eagle Grove headquarters. Final decisions in regards to hiring, firing, pay matters and major discipline are made at Eagle Grove by the Employer's executive vice president and chief operating officer, Anthony Russell. Also located in Eagle Grove is Gerald Fisher, who is in charge of the Employer's bulk operations. The Employer has bulk operations at its Eagle Grove, Hammond, Indiana and both the Buffalo and the Davenport facilities. The bulk operations of the latter two facilities will be further detailed below.

The Employer's Bargaining History

The Employer has had a longstanding bargaining relationship with the Intervenor, the Umthun Trucking Employees Association, dating back to 1973. The Intervenor represents a company-wide

unit of employees and has negotiated successive collective bargaining agreements with the current agreement becoming effective on August 7, 2000 and expiring on August 31, 2003. The collective bargaining agreement covers all seven terminals. The current agreement was negotiated and reached well after the Employer's start up in Buffalo which occurred in April, 2000.

The recognition clause in the agreement describes the unit as "all regular and part-time over-the-road truck drivers, loaders and mechanics, employed by the Company at its facilities" with a list of each facility, their addresses and zip codes. The Buffalo facility is not listed in the clause nor mentioned specifically anywhere else in the agreement. The Employer's chief operating officer Anthony Russell testified that the agreement was intended to cover the Buffalo facility since the Employer and the Intervenor consider Buffalo and Davenport to be a single facility or terminal. The record demonstrates that the Buffalo-based drivers have been covered by the agreement's provisions and their pay is governed by the terms of an addendum to the agreement which was entered into on March 10, 2000 by the Intervenor and the Employer which contemplated the different pay conditions and needs that the Buffalo drivers would have.

There was much testimony on the record regarding the definition and the Employer's usage of the terms "over-the-road drivers" and "short haul drivers". The terms are defined separately in the above-described current collective bargaining agreement:

Short Haul – Drivers that are normally home weekends and most nights, operating in specialized traffic lanes shall be considered as short haul drivers and shall be compensated according to the Short Haul Mileage Pay Scale.

Over The Road – Drivers who are not normally home weekends and most nights and who do not operate in specialized traffic lanes and who operate within the normal scope of the Umthun Trucking Co. system wide traffic lanes shall be compensated according to the Over The Road Mileage Pay Scale.

While the recognitional language only specifies over-the-road drivers, the collective bargaining agreement clearly covers short haul drivers setting out various rates of pay for different types of short hauls.

The Davenport Facility

The Employer's terminal building in Davenport at 5600 Rockingham Road has been in use by Employer since approximately 1992. It was built and owned by the Employer until it was sold in 1997 to another company, Brown National Lease. The Employer leased back office space, the drivers room and showers and parking space for its equipment from Brown and continues to utilize the facility as a terminal as a tenant.

The operations at the Davenport facility involves only over-the-road drivers. There are approximately twenty-five drivers that drive out of the Davenport facility. There are three van drivers, seventeen flat bed drivers and fifteen tank or bulk drivers that operate out of the Davenport facility. The Davenport drivers are all dispatched by central dispatchers in Eagle Grove. There is no dispatcher in Davenport. It appears that most or all of the Employer's over-the-road or systems drivers are dispatched centrally. Accordingly, other of the Employer's terminals that involve only over-the-road operations do not have dispatchers. As over-the-road or systems drivers, the Davenport drivers are not normally home week nights or weekends and are dispatched throughout the Employer's system depending on the availability of freight and the needs of the Employer's customers. There are no mechanics assigned to the Davenport facility. Most of the Employer's vehicle mechanical and maintenance are taken care by employees of Brown National Lease. Apparently, this arrangement is part of the Employer's leasing agreement with Brown.

The Employer's lease with Brown for the Davenport facility expires in August, 2002. At this point, the Employer plans to move its Davenport operations to the Buffalo location after the expiration of the Davenport lease.

The Buffalo Facility

The Employer commenced its Buffalo operations in April, 2000. Prior to moving to the Davenport terminal in 1992, the Employer had utilized the Buffalo facility as its terminal as a lessor. The Employer entered into a long-term lease to secure the Buffalo facility again in early 2000. The Buffalo facility is located approximately one and one-half miles from the Davenport terminal. The Buffalo operation was necessitated by its contracting to do an extensive amount of lime hauling for

Linwood Mineral Company. This work was previously done by Ruan Trucking. The drivers involved in Ruan lime hauling operation were represented by the Petitioner. For reasons not clear from the record, Ruan had decided to cease its major lime short haul operations. A number of the former Ruan drivers who had been involved in its lime hauling operation were hired by the Employer as Buffalo drivers. The Employer also hired other new drivers and some drivers from the Davenport facility were moved to the Buffalo facility to do lime hauling. At the time of the start-up, the Employer hired thirteen former Ruan drivers to haul out of the Buffalo facility. At the time of the hearing, there were approximately ten former Ruan drivers, six former Davenport drivers and eight other newly hired drivers driving from the Buffalo facility.

Unlike the Davenport drivers, the Buffalo drivers are dispatched locally. The Buffalo drivers are dispatched by Jeannie Hanks and Kevin Powell. Hanks is the dispatch supervisor and the parties are in agreement that she is a supervisor under the Act. She is the direct supervisor of the drivers, assigning them their routes and setting their hours. She also has disciplinary authority over the Buffalo drivers and can effectively recommend discipline up to discharge. Hanks reports to terminal manager Ron Ray and to Jerry Fisher who directs the Employer's bulk operations and is located in Eagle Grove. Powell, who is also a part-time recruiter for drivers for the Employer, is a part-time dispatcher working the second shift.

The Buffalo drivers all haul bulk commodities in tank trucks. They generally operate in designated and regular routes. Some of the Buffalo drivers are assigned their own trucks but a number of them are "slip seated" and drive different trucks depending on assignments by Hanks. As indicated above, the hauling contract with Linwood precipitated the Employer's Buffalo operation. Approximately eighteen of the Employer's twenty-four Buffalo drivers are dedicated to Linwood hauling. Officials of the Employer testified that Linwood had been a customer, albeit to a much lesser extent, prior to their taking over the short haul Linwood business and it appears that the Employer's Davenport over-the-road bulk drivers haul Linwood loads in long haul situations and had done so prior to the acquisition of the Linwood short haul business.

When the Employer acquired the Linwood short haul lime hauling business, it needed to utilize specialized tank trucks to satisfy Linwood's requirements. Accordingly, the Employer leased a number

of the needed tank trailers from Ruan Trucking to meet its needs at its new operation in Buffalo.

Although it is not altogether clear from the record, it appears that some or all of these tank trailers are the same ones formerly utilized by Ruan when it did lime hauling for Linwood before the Employer took over that business.

Terminal Manager

While the Employer's day-to-day hauling operations at the Buffalo facility are directed by dispatcher supervisor Jeannie Hanks, terminal manager Ron Ray has authority over both the Buffalo and the Davenport facilities. The Employer's chief operating officer Anthony Russell described Ray's duties thusly:

“Supervision of overall maintenance issues and parking, problems with scales, fueling, and then general personnel recommendations on hiring, firing and some discipline responsibilities.”

Russell further testified that Ray would make recommendations regarding the hiring and firing of Buffalo and Davenport drivers but the personnel in Eagle Grove rendered the ultimate decisions in such matters. Ray has the authority to suspend employees from either facility. In regards to the Buffalo drivers, Hanks initiates discipline and makes recommendations to Ray, who in the case of discharges, makes his recommendations to Eagle Grove. In regards to the bulk operations in Buffalo, Hanks reports to the bulk operations director in Eagle Grove, Gerald Fisher, and the record does not indicate involvement by Ray in regards to the details of the bulk operation. Ray previously was the supervisor/dispatcher of the Buffalo facility. He continues to maintain his office in Buffalo. The record is silent as to whether Davenport had a terminal manager prior to Ray taking the terminal manager job a month to six weeks prior to the hearing.

The Buffalo Mechanics

The Employer employs four mechanics at the Buffalo facility. Generally, the Buffalo mechanics perform repairs and maintenance on tank trailers and related equipment. They perform their work on tank trailers and tank equipment from both Davenport and Buffalo and this work is done

at the Buffalo facility. Also, all the Employer's trailers are cleaned at the Buffalo facility. As indicated above, the repair and maintenance of the Employer's tractors and other equipment is contracted to and done by employees of the Company that leases the Davenport facility to the Employer. The Buffalo maintenance work is supervised by Andy Green, maintenance manager. He is located at the Buffalo facility and supervises only the four Buffalo mechanics. He also interfaces with the contractor's maintenance employees in Davenport and checks the quality of their work. He performs no supervisory functions regarding the contractor's employees in Davenport.

Integration and Interaction Between the Davenport and the Buffalo Facilities

It does not appear that there is significant interchange or interaction from the Buffalo facility to the Davenport facility. One of two Buffalo employees testifying did not testify about taking any Davenport loads and the other related only one which took place on the Friday after Thanksgiving. On the other hand, over-the-road bulk drivers from Davenport commonly make short haul deliveries for Buffalo when the Buffalo facility is busy. If the Buffalo facility is very busy, Davenport drivers might haul as many as three bulk loads in a day for Buffalo. In these circumstances, dispatch supervisor Jeannie Hanks would ask for help from the central dispatchers in Eagle Grove who would, in turn, dispatch an over-the-road bulk driver to assist the Buffalo operation.

There is some limited social contact between the Davenport drivers and the Buffalo drivers when they are fueling at the Davenport facility. There is similar contact from time-to-time at the premises of several customers that have drivers from both facilities hauling for them. There was some testimony regarding joint safety meetings involving drivers from both facilities, but there was no testimony that such meetings had actually occurred. Seniority for all classifications at all terminals are on a company-wide basis figured on employees' hiring date. All of the Employer's drivers, loaders and mechanics, including the Davenport drivers and the Buffalo drivers and mechanics, receive the same benefits.

However, in respect to pay, the Buffalo drivers are paid differently not only from the drivers in Davenport, but differently from any segment of Employer's drivers, including other non-system short haul drivers at other terminals. The percentage rates paid to the Buffalo drivers were specially

configured and added to the Employer's and Intervenor's collective bargaining agreement prior but specifically in anticipation of the establishment of the Buffalo facility. The following testimony of Chief Operating Officer Anthony Russell illuminates the reasons why the new percentage rates were instituted for the to-be-hired Buffalo employees:

“THE WITNESS: There were short-haul drivers on tank. (Prior to the establishment of the Buffalo facility)*

HEARING OFFICER TUCKER: Were they paid similarly to what has been marked as Exhibit 7? (the Buffalo Wage Addendum)*

THE WITNESS: No, we had them on a flat fee.

HEARING OFFICER TUCKER: If this was an expansion why didn't you just keep all your short-haul drivers on a flat fee?

THE WITNESS: Because they weren't hauling the same types every day and they didn't have the volume to justify - for example, we paid like for the short haul across town, we paid a lot more because they didn't keep a continual volume.

HEARING OFFICER TUCKER: That is under the old –

THE WITNESS: Under the old system. This system, the volume is much greater and they were going to get more loads so we wouldn't pay them that same amount.

HEARING OFFICER TUCKER: You felt that change was necessary and so you entered into an agreement with the UREA (the Intervenor)*; is that correct?

THE WITNESS: Yes, that is correct.

HEARING OFFICER TUCKER: And that was for the new hires that came in as well as for the transferees?

THE WITNESS: Yes, that is correct.”

The records shows that the new short haul rates were only applied to Buffalo drivers. Short haul drivers at other of the Employer's terminals continue at the old rates.

*Parenthetical material added.

DISCUSSION AND DETERMINATION

As indicated above, the Employer and the Intervenor urges the dismissal of the instant petition on two grounds: (1) Their current collective bargaining agreement covers the Buffalo facility and that the petitioned employees are already represented by the Intervenor. Accordingly, the contract is a bar to the processing of the petition and there is no question concerning representation herein. (2) The petition seeks an inappropriate unit and that the Buffalo drivers unit is too narrow and is merely an extension of the existing Davenport facility which is part of the national unit represented by the Intervenor.

The Employer and Intervenor do not directly contend that the Buffalo drivers are an accretion to the existing unit. However, I find that to recognize their collective bargaining agreement as a contract bar, it is necessary to find that the drivers in Buffalo are properly accreted into the Intervenor's existing unit. See Firestone Synthetic Fibers Co., 171 NLRB 1121 (1968); Public Service Co., 190 NLRB 350 (1971). Accretions to an established bargaining unit are viewed by the Board as the addition of new employees to the existing unit. See Gould, Inc., 263 NLRB 442, 445 (1982). The record in this matter establishes that the Buffalo facility is a new, separate and distinct facility from the Davenport terminal with a complement of drivers which is nearly as large in number as the Davenport drivers group and is composed largely of new hires with only a small minority of transfers from the Davenport facility.

The Board has adopted a restrictive policy in finding accretion "because it forecloses the employee's basic right to select their bargaining representative." Town Ford Sales, 270 NLRB 311 (1984); Melbet Jewelry Co., 180 NLRB 107 (1970). Thus, the accretion doctrine is not applicable to situations in which the group sought to be accreted would constitute a separate appropriate bargaining unit. Passavant Health Center, 313 NLRB 1216 (1994); Beverly Manor – San Francisco, 322 NLRB 968, 972 (1971). Accordingly, both of the Employer's and Intervenor's theories for dismissal revolve around the core issue: does the Buffalo complement constitute an appropriate unit? Even assuming

that the Buffalo facility could be viewed as a relocation, spin off or as an extension of the Davenport facility, the unit question would resolve the issue of whether the contract should be extended to the Buffalo employees. Coca-Cola Bottling of Buffalo, 325 NLRB 312 (1998); Gitano Distribution Center, 308 NLRB (1992).

Where issues involving accretion, spin off, or relocation are raised, the Board will presume that a new operation is a separate appropriate unit. Id. See also Mercy Health Services North, 311 NLRB 257 (1993). Moreover, if this matter were to be analyzed as a unit question without the contract bar issue, there would be a single location or single terminal presumption to be overcome before the petition is dismissed. The Board has long held that:

a single location unit is presumptively appropriate for collective bargaining. J&L Plate, 310 NLRB 429 (1993); Bowie Hall Trucking, 290 NLRB 41 (1988). The presumption in favor of a single location unit can only be overcome “by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit.” Id. The factors that the Board examines in making this determination are centralized control over daily operations and labor relations, skills and functions of employees, general working conditions, bargaining history, employee interchange, and geographical location of the facilities in relation to each other. Id. at 42, citing Sol’s, 272 NLRB 621 (1984). The burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. J&L Plate, supra at 429.

The Board has also specifically found that single-terminal units are presumptively appropriate.

Goundske Transport, 171 NLRB 997 (1968); Alterman Transport Lines, 178 NLRB 122 (1969);

Wayland Distributing Co., 204 NLRB 459 (1973).

Further, when there is a scope of unit issue concerning whether a proposed unit is appropriate, the Board makes considerations as follows:

In deciding the appropriate unit, the Board first considers the union’s petition and whether that unit is appropriate. P.J. Dick Contracting, 290 NLRB 150 (1988). The Board, however, does not compel a petitioner to seek any particular appropriate unit. The Board’s declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. Black & Decker Mfg. Co., 147 NLRB 825, 828 (1964). “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.” Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951); see Staten Island University Hospital v. NLRB, 24 F.3d 450, 455 (2d Cir. 1994); see also American Hospital Assn. v. NLRB, 499 U.S. 606, 610 (1991), interpreting the language of Section 9(a) as suggesting that “employees may seek to organize ‘a unit’ that is ‘appropriate’—not necessarily the single most

appropriate unit.” A union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer unless “an appropriate unit compatible with that requested unit does not exist.” P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963); accord: Ballentine Packing Co., 132 NLRB 923, 925 (1961).

After applying the facts herein to the Board’s standards, I find that the record does not show that the functional integration between the Buffalo and Davenport and/or the Employer’s other facilities is such to negate the separate identity of the Buffalo complement of drivers and that the Employer has not overcome the presumption of the appropriateness of a single unit located at the Buffalo facility. It was created because of needs caused by the Employer’s taking over the extensive short haul routes of Linwood Mineral Company. It involved a new and unique hauling business for the Employer. The Buffalo facility caused the Employer to lease many tank trailers which had different features than the Employer’s tank trailers utilized at the Davenport facility. The Employer hired a number of new employees, most of whom came from Linwood’s former carrier, Ruan Trucking. The Buffalo driver complement at present consists of ten former Ruan drivers, eight new hires, and six former Davenport drivers. Despite the Employer’s efforts to characterize the Buffalo facility as a new expansion or extension of the Davenport, the Buffalo facility is separate and distinct from the Davenport terminal with its own particular mission and working conditions unique from those in Davenport and other of the Employer’s terminals.

The drivers at Davenport are all over-the-road drivers while the Buffalo drivers are exclusively short haul drivers. The two sets of drivers have much different hours and significantly different working conditions. The Board has long recognized the distinctions between local or short haul drivers and over-the-road or systems drivers. See e.g. Georgia Highway Express, 150 NLRB 1649 (1965); Gluck Bros., 119 NLRB (1958). Moreover, the Buffalo drivers are not only paid in a much different way than the Employer’s over-the-road drivers in Davenport and its other terminals, but are also compensated through a system distinct from the pay system utilized for short haul drivers at the Employer’s terminals that employ short haul drivers. Significantly, the Buffalo percentage rates are unique to the Employer and were specially designed for the Buffalo routes which had no prior parallel in the Employer’s system.

I also find that the Buffalo facility is separately supervised. Jeanie Hanks, dispatcher supervisor, dispatches, assigns trucks, and has disciplinary authority over the Buffalo drivers. While Hanks reports to terminal manager Ron Ray and makes effective recommendations regarding discipline to and through him, it appears that she also reports directly to Gerald Fisher, bulk operations director, in regards to operational matters. Ron Ray's duties and responsibilities as terminal manager as recited by the Employer's officials do not involve the assignment, direction, or overall supervision of either the Buffalo or Davenport drivers.

Contrary to the situation in Coca-Cola Bottling Co. of Buffalo, 325 NLRB 312, 313 (1998) which is relied on by the Employer in its brief, Hanks is not a "working supervisor" who spends time doing the work of or working with unit employees. I also note that the small size of the Orchard Park "satellite" facility in Coca-Cola played a significant role in the decision there. Here, the Buffalo facility has an equally large complement of drivers as Davenport with distinct working conditions, a separate system of dispatching, and a unique pay system. Under these circumstances the Buffalo facility cannot be deemed a satellite or extension of the Davenport terminal.

I also do not find the casual and social contact between the facilities' drivers when filling their trucks with gas at the Davenport facility to be a significant factor. Finally, I am mindful of the geographical proximity of the two facilities and the not insignificant amount of Buffalo short hauls made by Davenport over-the-road drivers when there are not enough Buffalo drivers. These factors, although noteworthy, do not diminish the factors recited above that clearly establish a separate identity and distinct community of interest for the Buffalo group. It is necessary to point out that the Buffalo dispatching list is comprised solely of Buffalo drivers. If a Davenport tank driver is needed to fill in by taking a Buffalo load, he is dispatched by an Eagle Grove dispatcher. Finally, it would appear that fuller staffing of the Buffalo drivers complement would obviate the need for Davenport help during busy times. As such, the use of Davenport tank drivers does not indicated functional integration between the two facilities. Accordingly, I find that the Buffalo drivers constitute an appropriate unit for bargaining. As such, an accretion of these employees into the Intervenor's existing bargaining units is not proper. Thus, I find that there is no contract bar to this Petition. Finally, I find that there is a question concerning representation and I deny the Employer's motion to dismiss. In light of my

findings above, there is no reason to reach any decision in regards to the issues raised by the Petitioner in regards to the collective bargaining agreement of the employer and Intervenor in respect to accretion.

6/ The scope of the unit was addressed and determined above. However, a composition issue remains. The Petitioner does not seek the four mechanics located at the Buffalo facility. While it is not clear from the record, on brief the Employer appears to take the position that the mechanics should be included in any unit found appropriate herein. On the basis of the Board's unit principles, I will exclude them from the unit found appropriate herein. While there is significant contact between the drivers and mechanics, the drivers have separate supervision, different hours, a different method of pay, different duties, and different working conditions. In these circumstances, the facts herein do not reveal such a community of interest between the drivers and mechanics as would render the proposed drivers unit inappropriate. McMor-Han Trucking Co., 166 NLRB 700 (1967). In reaching this finding, I note that the drivers and the mechanics do not interchange and do not work together. Cf. Carpenter Trucking, 266 NLRB 907, 908 (1983). Accordingly, I exclude the mechanics from the unit found appropriate herein.

7/ Although the Intervenor intervened on the basis of its contract with the Employer, the record revealed that certain employees within the unit found appropriate herein are members of the Intervenor. On that basis, the Intervenor is placed on the ballot herein. If the Intervenor does not wish to participate in the election herein it should request to withdraw within five days from the issuance of this Decision and Direction of Election.

8/ Your attention is directed to Part 103, Subpart B, Section 103.20 of the Board's Rules and Regulations, Series 8, as amended, which provides, inter alia, that employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election, that failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed, and that an employer shall be estopped from objecting to nonposting or late posting of Notices unless it notifies the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received the Notices. You

may wish to review the above rule in its entirety so that you are fully aware of its complete contents and the obligations imposed by it.

9/ The full first and last names and addresses of all eligible voters must be filed by the employer. North Macon Health Care Facility, 315 NLRB 359 (1994).

Classification Index Code: 440-1760-6240; 347-4040-3333-3333; 460-2500; 440-6725-7562-5000.
Date Issued: 12/21/00