

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

CORPORATE EXPRESS DELIVERY SYSTEMS<sup>1</sup>

Employer

and

6-RC-11788

GENERAL TEAMSTERS, CHAUFFEURS &  
HELPERS, LOCAL UNION 249 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 Barton Meyers, 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 Acting Regional Director.<sup>2</sup>

Upon the entire record<sup>3</sup> in this case, the Acting Regional Director 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>1</sup> The name of the Employer appears as amended at hearing.

<sup>2</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 May 11, 2000.

<sup>3</sup> The Employer filed a timely brief in this matter which has been duly considered by the undersigned. The Petitioner did not file a post-hearing brief.

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.

The Petitioner seeks to represent, as amended at the hearing, a unit consisting of all full-time and regular part-time delivery drivers employed by the Employer at its 100 Beechnut Drive, Pittsburgh, Pennsylvania location, excluding office clerical employees and guards, professional employees, and supervisors as defined in the Act, and all other employees. While the parties are otherwise in accord with both the scope and composition of the unit, the Employer, contrary to the Petitioner, would exclude approximately fourteen truck drivers on the ground that these individuals are not employees within the meaning of Section 2 (3) of the Act but are rather independent contractors. There are approximately 44 employees in the petitioned-for unit including the fourteen drivers whose status as employee is in dispute. There is no history of collective bargaining for any of the employees involved herein. <sup>4</sup>

The Employer operates a specialized delivery service, and maintains a facility in the Crafton area of Pittsburgh.<sup>5</sup> More specifically, the Employer is engaged in the business of distribution and delivery of pharmaceutical items, bank deliveries, and miscellaneous deliveries

---

<sup>4</sup> The parties stipulated, and I find, that Troy Raco and Jeff Vereb are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the unit inasmuch as they have the authority, in the interest of the Employer, to hire, fire, and otherwise responsibly direct the operations and workforce of the Employer. Accordingly, I shall exclude Troy Raco and Jeff Vereb from the unit herein found to be appropriate. Further, the parties stipulated, and I find, that James Sculli and Jody Carr are supervisors within the meaning of Section 2(11) of the Act inasmuch as they have the authority to responsibly direct employees in their work, as well as the authority to discipline employees in the interest of the Employer. Accordingly, I shall exclude James Sculli and Jody Carr from the unit herein found to be appropriate.

<sup>5</sup> In his brief (p.4, fn.8), the Employer's counsel asserts that as of the date of the hearing, the Employer was in the process of "relocating" from the current Crafton facility to a location in Monroeville, Pennsylvania, a suburb of Pittsburgh. The record does not explicitly support this statement. However, neither party asserts that any relocation would in anyway change the scope or composition of the appropriate unit. Accordingly, I shall refer in the unit description to the Employer's "Pittsburgh" facility, which will encompass whichever location is in operation currently.

such as flowers or church bulletins. In addition, the Employer performs line haul operations for several customers, including Sears. Further, the Employer provides a parts storage facility for Sun Microsystems (Sun) and provides an on-demand delivery service to Sun for its field engineers.

With respect to the pharmaceutical business, the record reflects that the Employer provides a line haul business for its pharmaceutical customers. In this regard the pharmaceutical products are transported by the Employer from the wholesalers' points of distribution to the Crafton facility.<sup>6</sup> There, the product is counted and sorted, and controlled substances are documented and locked in an appropriate area. The product is then further sorted by geographic area, driver's route, and stop, loaded onto an individual vehicle, and delivered to the appropriate customer.

With respect to the Employer's Sears business, the record reveals that Sears contracts with the Employer to pick up damaged or repairable merchandise from retail outlets, take the merchandise to a Sears reclamation center and redeliver the merchandise to the retail outlet when any repairs are completed. This business is conducted in the Pittsburgh, Butler and Johnstown, Pennsylvania areas.

The Employer also conducts what it refers to as bank runs. This work consists of taking checks from the Pittsburgh area to Philadelphia, and returning checks on the following day. The Employer also transports checks that move in and out of Pittsburgh on various airlines. The bank runs are conducted over the weekends, and the airline work is done on a daily basis, seven days per week.

The Employer also provides delivery service for Sun, which is engaged in the sale and distribution of computers and computer components for customers in and around the city of Pittsburgh. The Employer stores computer components for Sun, and provides a same day delivery service to any location for which Sun requires the delivery.

---

<sup>6</sup> A line haul is the direct transportation of goods from point A to point B.

Finally, the Employer provides weekly delivery of church bulletins and newsletters, and on Sundays receives at its facility deliveries of flowers which are then delivered to florists on Mondays or Tuesdays.

The record reveals that Troy Raco and Jeff Vereb are the Operations Managers of the Crafton facility, and have overall supervisory authority over this facility. James Sculli and Jody Carr are Operations Supervisors at the facility. The Employer employs approximately 30 full-time and part-time employee drivers, as well as 14 drivers, herein referred to as the ICs, whose employee status is at issue.

ICs provide services to the Employer pursuant to individually negotiated contracts entitled "Independent Contractor Agreement For Transportation Services" (the Agreement)<sup>7</sup>. Under the terms of the contract, the IC is required to provide his own vehicle and to drive specifically determined routes for the Employer. The ICs are responsible for inspection, maintenance, and upkeep of the vehicle. If an IC's vehicle is out of service, the IC may lease a vehicle from the Employer while his own vehicle is being repaired. ICs pay their own registration and license fees, tolls, fuel, and insurance costs. ICs are required to carry their own cargo liability insurance as well. ICs are able, pursuant to the Agreement, to use their vehicles for business not connected with the Employer's business, or for their own personal use. They pay their own worker's compensation costs, and may hire additional employees to assist them in their work. If an additional employee is hired, the IC is responsible for that employee's wages, worker's compensation, and any other costs associated with the employee or helper.

---

<sup>7</sup> The Agreement expressly provides that the relationship between the IC and the Employer is an independent contractor relationship, and provides that the Employer agrees and acknowledges that it "shall have no right to direct or control the details or methods by which the IC performs its services" and that the Employer "shall be concerned only with the results to be accomplished by the services performed by the [IC] and not with the means by which those results are accomplished." The Agreement further provides that the IC is solely responsible for the control and direction of its employees including the hiring, firing, formulating and implementing employee performance standards, and setting wages and hours of work. The Agreement also provides that the Employer shall not request the IC to terminate or to discontinue the use of any particular employee of the IC except for violations of or breaches of the Employer's or its customers rules or applicable laws or governmental rules or regulations. Finally, the Agreement provides that the IC is expected to work for other business entities.

The IC is also responsible for any disciplinary actions with respect to the IC's employee. The Agreement may be terminated upon seven days' notice by either party, and is effective for a period of one year or less. ICs need not put up a franchise or license fee. It does not appear that ICs have a proprietary interest in their existing service areas which would enable the ICs to have the contractual right to sell his or her service area or to receive compensation for customer accounts that are reassigned or removed from the service area.

As to compensation, the record reveals that with respect to those ICs performing delivery transportation services, rather than line haul work, the Employer and the ICs negotiate a guaranteed minimum amount of compensation for a specific route based on the average number of stops in a given geographical area. This "per stop" payment varies among the ICs, and additional compensation is negotiated for each stop over the minimum.<sup>8</sup> ICs performing the Sun delivery service negotiate a flat rate for a specific time period, and a percentage of the cost of the job. If the percentage exceeds the flat rate, the IC receives the percentage payment. ICs who do line hauls are also paid on a flat fee basis. ICs are paid in the form of a settlement check, which is billed by the independent driver on Monday, and paid by the Employer on Thursday. The settlement is for jobs from the previous week. There is no maximum earning cap for the IC. The Employer does not withhold taxes from the checks issued to the ICs, but issues each IC a Form 1099 at the end of the year. ICs do not receive benefits such as paid vacations and holidays, or sick leave.

As noted, the Employer imposes no restrictions on the ICs regarding the use of their vehicles to pursue other business. Indeed, the record establishes that ICs are even encouraged to perform services for other business entities at the same time they are making deliveries for the Employer since it allows the ICs to generate more income, which reduces the possibility that

---

<sup>8</sup> The compensation agreement is attached as an exhibit to the Agreement. ICs are not required to assume additional stops as a condition to drive for the Employer. Although the record is not entirely clear, it appears that the "negotiations" which take place between the Employer and the ICs are more than pro forma discussions. It appears that the ICs are not compelled to accept the Employer's first proffered compensation package as a condition of driving for the Employer.

the Employer may have to renegotiate the compensation package when the ICs are faced with unforeseen adverse economic circumstances such as the recent significant increase in the price of fuel. In this regard, the record reveals three of the ICs use their vehicles on a regular basis to make deliveries for customers other than the Employer. In addition, one who does line hauls for the Employer negotiated with another business entity to transport the latter's product on his way back from doing line haul work for the Employer. ICs' vehicles, unlike the Employer owned trucks operated by the Employer's employees need not be emblazoned with the Employer's logo.

As a condition of driving for the Employer the ICs must undergo drug and alcohol testing before being utilized by the Employer as drivers and are subject to Department of Transportation testing policies. The Employer also utilizes a criminal drug screen for ICs. Any helpers hired by the ICs are required to have drug and alcohol as well as criminal background screens if they are used on a regular basis. Although it has not occurred, the Employer may refuse to provide a route to an IC's helper if the helper failed the criminal background check.

The Employer schedules all employees and ICs, and decides which route is to be done by which employee or IC, consistent with the geographic area and specific work negotiated with the IC. The Employer's customers set the schedule of deliveries and pickups, and the Employer then creates a route or schedule for the individual driver. Both ICs and employees are provided with route sheets, which set out the stops required by the Employer's customer. In cases of "time sensitive" deliveries, those deliveries will be specifically noted on the route sheet. A customer may require an employee rather than an IC to perform its delivery work, and the Employer will comply with that request.

The IC establishes his own delivery schedule, subject to the customer's time requirements. The independent driver has no required start time, and does not punch a time clock. There is no general requirement that the IC return to the Employer's terminal at the end of the day, unless ICs have a C-2 Blank, which is a Drug Enforcement Agency form used by pharmacies to order controlled narcotics from drug wholesalers. These DEA mandated forms

must be turned in to the Employer on a daily basis so they can be forwarded to the drug wholesaler.<sup>9</sup> Contact by ICs with the Employer is maintained via cell phone or pager type communications systems, and these may be owned by the IC, or leased from the Employer, with a fee for that service. The IC may, under the contract, decline Employer requests for deliveries but this will result in reduced compensation. In that situation, the Employer will assign a different driver to complete the assignment. The IC selects and utilizes his or her own vehicle, subject only to the constraint that it be of an appropriate size for the work. If a customer requires a uniformed delivery person, the IC must provide a uniform with the Employer's logo at the IC's own cost. The IC's trucks are not required to have the Employer's logo, but are required to have the Employer's state Public Utility Commission operating numbers if they are of a certain size. The record reveals that required paperwork is the same for drivers and ICs except that the ICs need not mark their mileage, or denote which Employer-owned vehicle was used for the job, as required of employee drivers.

Route sheets, created by the Employer, delineate the geographic area a route is in, and list the potential stops in that area. The blank route sheets are the same for each day, but the individual driver will fill in different information daily depending on the stops actually required. Stops are listed in time sensitive order, but an IC, unlike employee drivers, may deviate from the route if the deliveries are still made in a timely fashion. The number of stops for both drivers and independents is approximately the same for each route.

The Employer maintains a driver file for the ICs, which includes the contractor agreement, a copy of the medical card, any CDL licenses, and copies of required insurance documents. Customer complaints about an IC could result in the refusal to provide the IC with further work, although this has not occurred. The Operations Manager may also discuss the

---

<sup>9</sup> A delivery driver will pick up an original controlled substance form from pharmacies. The pharmacist will complete a C2-Blank and send a copy by facsimile to the drug wholesaler. The pharmacist will give the original order form to the delivery driver who in turn takes it to the Employer's facility so that the driver doing the line haul to the drug wholesaler can submit the original to the wholesaler. If the two forms match, the wholesaler will release the controlled narcotic to the driver. This process ensures that the drugs being released to a line driver are in fact the drugs ordered by the pharmacist.

situation with the individual in order to alleviate the problem. Although the Agreement indicates that an IC's vehicle must display the Employer's logo, this is not enforced.

ICs are encouraged to take on extra business while delivering for the Employer, as it potentially reduces the Employer's costs, because a lower base rate may be negotiable.

For pharmaceuticals, the average IC earns from \$112-170 for each day worked, while an employee performing similar work earns an average of \$66.00 per day. The IC who performs the work for Sears averages between \$1325-2000 per week, while an employee performing the same work earns \$400 per week. The other line haul ICs earn between \$1800-2500 per week, while the employees performing that work earn \$400 per week. The ICs making the Sun deliveries earn a base amount plus any extra they may negotiate. Their average compensation is \$500-625 per week. Hourly employees performing the Sun deliveries earn hourly wages roughly equivalent to those earned by employees performing pharmaceutical runs.

ICs are free to turn down an entire route or portion of it on any given day. Indeed, the Agreement expressly provides that the "contractor shall have the right to decline or accept" any request to perform delivery services for the Employer. This decision, however, impacts on the IC's compensation for if the IC refuses a particular stop, he will not be paid for that stop. If an IC turns down several stops so that he or she falls below the number upon which the guaranteed minimum is based, the minimum disappears and the IC is compensated on a per stop basis. ICs are free to report or not on any given day, regardless of whether the Employer has a shipment to be delivered. Although the IC will not be paid for any day on which they do not report, this decision cannot result in any discipline being imposed by the Employer.

In contrast to the ICs, the record reveals that with respect to the non-IC drivers employed by the Employer whom the parties agree are properly in the unit, the Employer provides each driver a vehicle and all necessary equipment such as hand carts and straps. The Employer pays for all maintenance, repairs, fuel costs and insurance for each vehicle driven by its own drivers. In addition, the record indicated that each such vehicle has a company logo on it. The Employer also provides each driver with a communication device, such as a cell phone

or pager. The record further reveals that these drivers are hourly paid, receive overtime compensation and have all federal, local, and state taxes deducted from their bi-weekly paychecks. The Employer also pays worker's compensation for these individuals.

The non-IC drivers punch a time clock and must report in and out of the facility each day. Drivers who fail to report to work are not paid, and absences may result in disciplinary action. Non-IC drivers are assigned specific routes and may not refuse to accept an assigned route. These drivers must complete their routes in the particular order listed on their route sheets, with primary attention required for any "time-sensitive" deliveries required by a customer. Failure to complete a route in the time required may result in disciplinary action.

When hired, drivers are provided an employee packet containing the Employer's various employment policies, which they must read and acknowledge. The Employer maintains a personnel file on each non-IC driver which contains, inter alia, the acknowledged employment policies, licenses, testing results and any disciplinary documentation. The Employer provides these drivers with uniforms for those customers who require uniformed couriers. Drivers are required to have pre-employment drug and alcohol screens, and are subject to Department of Transportation policies in this regard as well. Finally, these drivers receive sick leave benefits, paid vacations and holidays, and retirement and pension benefits from the Employer. There is also an "Employee Appreciation Day" for these drivers from which ICs are excluded.

Section 2 (3) of the Act excludes independent contractors from the definition of "employee" and, accordingly, from coverage under the Act. A determination of independent contractor status is governed by normal agency principles. Thus, in NLRB v. United Insurance Co. of America, 390 U.S. 254 (1968), the United States Supreme Court determined that in each case the issue should be determined by the application of common-law agency principles. In so doing, the Court emphasized, and the Board has consistently stated, that all incidents of the relationship must be assessed and weighed, with no one factor being decisive in the

determination.<sup>10</sup> The Board, in two recently decided cases, has clearly enunciated the principle that in considering independent contractor status, all the incidents of the relationships between the individual in dispute and the employer must be assessed and weighed, and no one factor is decisive. Thus, the common-law agency test encompasses a careful examination of all factors, and not just those that involve “a right of control”. Roadway Package System, Inc., 326 NLRB No. 72 (1998); Dial-A-Mattress Operating Corporation, 326 NLRB No. 75 (1998).

As previously noted, the Petitioner contends that all drivers should be included in the unit found appropriate herein, while the Employer contends that 14 drivers are independent contractors, and should be excluded from the unit found appropriate herein. Applying the common-law agency test to the facts of this case, I find that the factors weigh more strongly in favor of a finding of independent contractor status for the ICs in dispute.

The record reveals that based upon the customers the Employer has developed, the Employer has made a decision to outsource work to ICs. In so doing, the Employer has structured its relationship with the drivers in dispute to allow them to make an entrepreneurial profit beyond a return on their labor and their capital investment. Negotiations are entered into to determine the IC’s geographic area of work, and the precise limits of his compensation. Thus, a line haul driver is compensated on a flat rate, which is negotiated directly between the Employer and the driver based on the geographic area and mileage to be driven. Delivery

---

<sup>10</sup> In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:

- (a) the extent of control which the master may exercise over the details of work;
- (b) whether or not the one employed is engaged in a distinct occupation or business;
- (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- (d) the skill required in the . . . occupation
- (e) whether the employer or top workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (f) the length of time for which the person is employed;
- (g) the method of payment, whether by the time or by the job;
- (h) whether or not the work is part of the regular business of the employer;
- (i) whether or not the parties believe they are creating the relation of master and servant; and
- (j) whether the principal is or is not in business [Restatement of the Law of 220 Agency 2d, pp. 485-486]

drivers generally negotiate for a base rate based upon a minimum number of delivery stops, with extra payments available for deliveries in excess of the minimum. These extra stops are separately negotiated. The Sun drivers negotiate a base rate and a percentage of the revenues for the jobs performed. If the percentage revenues eclipse the base rate the driver is paid only the percentage agreed upon. The record reveals that each IC's compensation rates are different.

The drivers' Agreement permits the drivers to work elsewhere and to perform work for other employers. Indeed, the record reveals that at least one driver has driven the Employer's goods to one location on a line haul route, and returned with a different employer's goods on his truck. The record reveals as well that the ICs do perform, and are encouraged to perform outside work with their vehicles. At least three of the 14 drivers in dispute use their vehicles for other commercial purposes.

Thus, as in Dial-A-Mattress Operating Corporation, supra, the Employer has structured the relationship with the ICs so as to retain very little control over the IC's ability to maximize his opportunity for gain or loss, and to minimize the Employer's responsibilities beyond that of payment for negotiated services. The Agreement entered into between the Employer and the IC obligates the IC to pay all fees, maintenance, taxes and other costs associated with his or her vehicles, and the costs associated with any helpers they may hire themselves. The Employer treats its ICs as independent contractors vis-à-vis its dealings with the public, and specifically denotes them as such in the Agreement.

The Employer has no control over the vehicle to be used by the independent, except to insure that the size of the vehicle is appropriate to the goods to be delivered and the type of route for which that driver has negotiated. Employer logos are not required on the trucks, nor are Employer uniforms required except when requested by a customer. These factors too, suggest that the ICs at issue are independent contractors, rather than employees. As in Dial-A-Mattress Operating Corporation, supra, the Employer has no requirements with respect to the model, color, size or condition of the IC's vehicles, and there is no fuel subsidy or maintenance

service support, save the availability of a rental vehicle from the Employer should an IC's vehicle be out of service. These facts are in stark contrast to those in Roadway Package System, Inc., supra, wherein the Employer mandated that its drivers' vehicles meet precise specifications set by the Employer, with required make, model, chassis, payload, shelving, and rear door for each vehicle. Moreover, in Roadway, supra, the Employer provided significant financial assistance to the driver so that the driver could purchase or lease the proper vehicle from the Employer. In addition, in Roadway, supra, the Employer required specific markings, logos and insignia of the Employer on each vehicle, which required masking or removal prior to the driver's use of the vehicle for other purposes. No such requirements, supporting a finding of employee status, are found in the instant case.

In the instant case, the IC may choose what time to begin his route and determine when he has finished performing his services for the Employer for the day. The IC is not required to start or end his day at a specific time, nor to return his vehicle to the Employer's facility at the end of the day. The record reveals that the customers of the Employer have time targets for both the pick-up and delivery of the goods. As a result, the IC is constrained to provide the services in a timely fashion, as determined by the customer of the Employer, although the IC may deviate from the prescribed route as he determines necessary, or more cost effective.

Route sheets must be completed showing that the deliveries were made, and if there are time sensitive stops, indicating the time of delivery. Route sheets are returned to the Employer on a daily basis, and at times on a weekly basis. There is separate required paperwork with respect to controlled substances, and both the employees and ICs are required to complete that paperwork.

With respect to the Sun ICs, the record reveals that the drivers must stay in close contact with the Employer, either by cell phone or pager, in order to be able to complete any required one-hour deliveries. The record reveals that several of the ICs doing the Sun work actually stay at the warehouse facility, waiting for any required deliveries although they are not required to do so.

One or more of the four supervisory individuals monitors the ICs' work to assure compliance with the customer's needs, but not on a daily basis. Customer complaints are checked, and may be the basis for termination of an IC's contract. The record reveals only one termination of an IC's Agreement. In that instance the Agreement was terminated due to improprieties with respect to controlled substances. ICs do not receive employee benefits. While ICs are initially drug and alcohol tested, they are not subsequently tested for these substances, as are the Employer's employees.

With respect to the working conditions of the ICs, the record supports a finding of independent contractor status. As in Dial-A-Mattress, supra, the ICs at issue herein primarily work away from the Employer's facility, and are minimally supervised by the Employer's personnel. The ICs do not have required stop or start times, do not punch time clocks, and may determine their own driving route. Deviations from the agreed upon routes or number of stops results in potentially lowered compensation, but not disciplinary action. In addition, other than governmentally required narcotics paperwork, ICs need only complete route sheets indicating the stops made. In this regard I note that the record reveals no required route sheets for line haul ICs or the Sun ICs. Additionally, the record reveals no employee benefits such as health insurance, sick leave or other benefits enjoyed by the ICs, and they are subject to reduced drug and alcohol testing requirements.

Thus, as in Dial-A-Mattress, supra, the record establishes that the ICs are not subject to the same work rules as the other drivers employed by the Employer, that they do not enjoy the same benefits, and that the Employer's regulatory and disciplinary requirements with respect to its ICs differ significantly from those of its employees. Accordingly, these incidents of the ICs' daily work requirements support a finding of independent contractor status in the instant case.

In contrast to these circumstances, the drivers in Roadway Package Systems, supra, were required to interface with the Employer's other operations on a daily basis, including the requirement that the vehicle be located in a prescribed location at a prescribed time for loading purposes, that they wore approved uniforms with logos, that drivers were required to be in

constant contact, at least electronically, with the Employer, and upon their return to the terminal each evening had to transfer additional data into the Employer's computer. Moreover, drivers could not refuse to accept merchandise for pick up and delivery in their primary work area. As the Board found in Roadway, supra, all these incidents of employment of the Roadway drivers supported a finding in that case of employee status.

Based upon the record as a whole, I find that the ICs in dispute are more closely akin to independent contractors rather than employees. Dial-A-Mattress Operating Corporation, supra. In this respect, the ICs are free to seek other business of their own, are required to drive their own vehicles for which the Employer provides no financial assistance or support except for the possibility of leasing a vehicle if the IC's vehicle has broken down, and are responsible for all fees and costs associated with the vehicle and any costs associated with any help they may hire. Further, the record reveals complete financial control and incentive for entrepreneurial control by the IC based on his negotiating of rates and his ability to provide more or less service for the Employer based on his or her own preferences. In addition, I note that the IC has control over the parameters of his own work day with the exception of certain "time sensitive" stops required by the Employer. Even in this respect the IC may deviate from any Employer-directed driving schedule as long as the time sensitive stops are completed properly.

Accordingly, I find 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:

All full-time and regular part-time delivery drivers employed by the Employer at its Pittsburgh, Pennsylvania location, excluding independent contract drivers, office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

#### **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>11</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, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>12</sup> Those eligible shall vote whether

---

<sup>11</sup> Pursuant to Section 103.20 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. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

<sup>12</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 May 4, 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 requirement here imposed.

or not they desire to be represented for collective bargaining by General Teamsters, Chauffeurs & Helpers, Local Union 249 a/w International Brotherhood of Teamsters, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 27<sup>th</sup> day of April 2000.

/s/Stanley R. Zawatski  
Acting Regional Director, Region Six

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

177-2414  
460-7550-6200  
177-2484-5067