

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

**CONSOLIDATED VENDORS CORPORATION
OF MICHIGAN, d/b/a KNIGHT'S
VENDING AND FOOD SERVICE¹**

Employer

and

CASE 7-RC-21854

**TEAMSTERS LOCAL 164, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO**

Petitioner

APPEARANCES:

Robert W. Sikkel, and Robert A. Dubault, Attorneys, of Muskegon, Michigan, for the Employer

Dan Dengel, of Jackson, Michigan, and Andrea F. Hoeschen, Attorney, of Milwaukee, Wisconsin, on brief, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

¹ The Employer's name appears as corrected on the record.

² The Employer and Petitioner filed briefs, which were carefully considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
4. The Petitioner seeks a unit of about 31 full-time and regular part-time vending route drivers, relief vending route drivers ("route drivers"), field service technicians, and installers employed by the Employer at its 669 State Circle Drive, Ann Arbor, Michigan location. The Employer maintains that the smallest appropriate unit must also include about 25 employees at its 48129 Wixom Road, Wixom, Michigan location, approximately 30 miles from the Ann Arbor location, including in addition to the classifications sought by Petitioner, warehouse employees³, installers, and refurbishing employees.⁴ The parties also disagree as to the supervisory status of Ann Arbor Lead Service Technician Rick Whipple and Wixom Lead Service Technician Eric Runyon. The Petitioner, contrary to the Employer, contends that the lead service technicians are statutory supervisors.

The Employer is a Michigan corporation engaged in providing full-line vending services to various customers in Michigan, including schools, factories and offices. The two sites at issue herein, Ann Arbor and Wixom, constitute the Employer's East Michigan region, administered by Regional Manager Brian Sal, who maintains an office at the Wixom location, and who reports to corporate officials at the Employer's corporate office in Muskegon, Michigan. A human resources employee reports to Sal, and handles much of the personnel work at the two branches within the region. Each branch has a manager, Keith Gainey in Ann Arbor and Eric Gorham in Wixom, who report to Sal, and other supervisors who generally report to the branch manager. The petitioned-for employees and other disputed employees are permanently assigned to one branch.

³ The Employer's warehouse is located in the Wixom facility and all of the warehouse employees are employed there. In view of my conclusion as to scope of unit, I do not reach the issue of whether warehouse employees share a community of interest with the classifications included in the unit found appropriate herein.

⁴ However, the parties agree, and I conclude that Ann Arbor shuttle driver Larry Yeoman, who is also classified as a driver/warehouse employee, is included in the appropriate unit because he shares a community of interest with the vending route drivers and field service technicians, all of whom operate vehicles as part of their work.

The vending route drivers and relief vending route drivers at each location drive a regular route, assigned by a branch route supervisor, service their regular customers by filling the vending machines with food, drink, and other goods, and retrieve the coins and other currency deposited into the machines. Wixom route drivers pull their own product from the warehouse located at the Wixom facility, while the Ann Arbor product is trucked to Ann Arbor from Wixom by the shuttle driver for the Ann Arbor route drivers. Sixteen route drivers and three relief drivers employed at Ann Arbor service the sixteen routes handled by the Ann Arbor branch. Fifteen route drivers, including a coffee route driver⁵, and three relief drivers employed at Wixom service the Employer's customers of the Wixom branch.

The Ann Arbor drivers report to one of two Ann Arbor route supervisors, Dave Werth or Clyde Rogers, and the Wixom drivers report to one of two Wixom route supervisors, Don Davis or Jamey Carey⁶. Both route supervisors report to their respective branch managers. The route drivers generally report to work, Ann Arbor or Wixom, at about 5:00 a.m., complete loading their trucks, service their routes, return to the Employer's facility, drop off their collections, and prepare their trucks or supplies for the next day. The Ann Arbor drivers fax requests to the Wixom warehouse for supplies needed for the next day's routes, while the Wixom drivers pull their own product. All regular route drivers are paid on a commission basis; relief route drivers and new route drivers are salaried. The parties agree that all Ann Arbor route drivers, including relief route drivers, should be included in whatever unit is found appropriate.

Three field service technicians and one lead field service technician are employed at each of the facilities. Field service technicians respond to customer or route driver reports of defective vending machines, and drive to and repair the machines on the customer's premises. Generally, Ann Arbor technicians service and maintain the machines of customers of the Ann Arbor facility within pre-assigned zones, while Wixom technicians service and maintain the customers of that facility within pre-assigned zones. Service technicians at both facilities work about eight hours a day, with staggered shifts beginning at either 7 or 8 a.m. The parties agree that Ann Arbor service technicians should be included in whatever unit is found appropriate.

⁵ The Wixom coffee route driver services the entire geographic region including the Ann Arbor area. However, the coffee route driver reports to Wixom, not Ann Arbor, each day, and is immediately supervised by Wixom supervisors.

⁶ The parties stipulated, and I conclude, that the following individuals possess the authority to hire, fire or discipline employees, and are excluded as supervisors under Section 2(11) of the Act: Regional Manager Brian Sal; Corporate Asset Manager Jim Knight; Branch Managers Keith Gainey and Erik Gorham; Route Supervisors Clyde Rogers, Dave Werth, Don Davis, and Jamey Carey.

Ann Arbor shuttle driver Larry Yeoman is the only petitioned-for employee who regularly works at both facilities. Yeoman, employed in Ann Arbor, drives between the facilities twice a day, transporting product from the Wixom warehouse to Ann Arbor for the Ann Arbor route drivers, and transporting collections from Wixom to Ann Arbor, where the money is counted and secured in the “money room,”⁷ located in the Ann Arbor facility. In connection with his duties, Yeoman has limited contact with Wixom warehouse employees, and regular contact with various employees in Ann Arbor. The parties agree that the shuttle driver should be included in whatever unit is found appropriate.

Also in Ann Arbor, the two installation and five refurbishing employees report to Ann Arbor Asset Manager Jim Knight. The two installation employees drive to customer facilities, install new or refurbished vending machines, remove vending machines from customer facilities, and transport the machines back to the refurbishing department located in the Ann Arbor facility. The five refurbishing employees generally perform their refurbishing work at the Ann Arbor refurbishing department, but minor refurbishing work such as refacing a machine, is sometimes performed at the customer’s facility. The refurbishing employee uses an Employer truck to travel to customer facilities. On weekends and holidays a refurbishing employee is on-call to respond to customer reports of malfunctioning machines, work which would be performed by service technicians during normal work hours. While the refurbishing and installation employees service customers of both the Ann Arbor and Wixom facilities, their immediate supervisor, Knight, is located in the Ann Arbor facility.

All of the employees at issue at both locations share identical, corporate-set, fringe benefits, and utilize the same employee handbook. The payroll period, payday, and job duties are the same at both locations. Hourly employees punch a time clock at the respective facilities, work similar hours, and wear a common uniform, albeit with different shirt patches. There are three annual employee social functions at which employees from both locations participate. Paychecks are sent directly from the Muskegon corporate office to the branch, where they are distributed by branch supervisors to employees.

The evidence provides examples of permanent and temporary employee interchange between the facilities. Thus, available jobs at either location are posted at both locations. Earlier this year, service technician Eric Runyon

⁷ The parties agree, and I conclude, that the money room employees, with dissimilar job duties and little work contact, share no community of interest with the employees in the unit found appropriate herein, and are excluded from the unit.

voluntarily transferred from Ann Arbor to Wixom.⁸ Approximately three years ago Jamey Carey transferred from route driver in Ann Arbor to relief driver in Wixom. Eric Gorham, current Wixom branch manager, on a date not set forth in the record, transferred as a route driver from Ann Arbor to Wixom. Route driver Steve Temple transferred from Wixom to Ann Arbor in 1999.

The record also contains nine examples of Wixom service technicians performing work for Ann Arbor customers, Ann Arbor service technicians performing work for Wixom customers, or filling-in by employees at either facility for route drivers at the other facility. These examples of temporary interchange are generally for part of a day, or a day or two, and involve dealing with customers who are ordinarily served by the other location. The record does not suggest that the employees report to anybody other than their regular supervisors during the day or part of a day that they are servicing customers of the other facility.

While the regional manager establishes a progressive discipline policy that applies to both branches, and can become involved in the hiring process by participating in employee interviews, or reviewing hiring decisions made by branch managers, it is largely the branch managers who make day-to-day decisions involving employee discipline and hiring. Thus, branch managers or route supervisors determine when discipline is necessary, and have the unilateral authority to impose verbal warnings and documented verbal warnings. As to higher levels of discipline imposed by route supervisors, both the branch manager and regional manager must “sign-off” on the discipline, but there is no evidence that these managers independently investigate the occurrence. Further, the Ann Arbor branch manager has never overturned discipline imposed by an Ann Arbor route supervisor, and the regional manager has never overturned discipline imposed by the Ann Arbor branch manager.⁹ The branch managers have no authority over the employees of the other branch.

If it is necessary to hire employees for either location, the branch manager reports to the regional manager that it is necessary to hire a new or replacement employee. The regional manager notifies the human resources person to start the hiring process, and that person places help wanted advertisements and screens applicants. Potential new hires are then interviewed by the branch manager, who

⁸ In its brief, the Employer contends that Howie Sugiyama transferred from working as a route driver in Ann Arbor to working in the warehouse in Wixom. However, the record reflects that Sugiyama ceased his employment in Ann Arbor, and about nine months later was put to work in the Wixom warehouse.

⁹ Apparently, on one occasion the Wixom branch manager asked the regional manager if he could terminate a particular employee. The regional manager told the Wixom branch manager that he wanted to “see more paperwork.” The final disposition of the incident is not detailed in the record.

recommends the hire of a particular applicant. The regional manager reviews the paperwork and may, or may not, interview the applicant. In instances where the regional manager has disagreed with the branch manager's recommendation, the applicant chosen by the branch manager has nevertheless been hired.

The regional manager determines the overall work schedule of both facilities, but the branch managers retain authority to grant variances to the schedule on their own authority. Branch managers determine vacations schedules and oversee the day-to-day business at their respective branches.

It is well established that a single-facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated with another unit, that it has lost its separate identity. *J & L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). To determine whether the presumption has been rebutted, the Board looks at such factors as centralized control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; employee interchange; geographic location; and bargaining history. *Esco Corp.*, 298 NLRB 837, 839 (1990).

Here, while the regional manager retains centralized control of certain aspects of the operations of the Ann Arbor and Wixom facilities, the Ann Arbor branch manager and supervisors retain the day-to-day authority to assign jobs, vary hours, schedule vacations, interview and effectively recommend the hire of new employees, unilaterally impose lower levels of discipline, and effectively impose higher levels of discipline. Although the regional manager retains final approval of hire and discharge decisions, the evidence indicates that the branch manager's decision is generally followed. This evidence is demonstrative of sufficient local autonomy to support a single-facility presumption. See *Rental Uniform Service*, 330 NLRB No. 44 (Dec. 13, 1999); *D & L Transportation*, 324 NLRB 160 (1997).

While the Employer maintains that the evidence of employee interchange supports a finding of a two-facility unit, such evidence indicates that each location has a permanent staff, that permanent transfer is not typical, and that temporary interchange generally involves simply dealing with the customers of the other facility, rather than reporting to and operating under the supervision of the other facility. Indeed, here there is evidence of only 4 permanent transfers among about 55 employees in the 2 facilities in the past 2 or 3 years, as compared to 21 permanent transfers among 172-182 employees in *J & L Plate*, supra at 430, in which case the Board found a single location unit appropriate. In *J & L Plate*, the Board concluded that 20 temporary transfers is "relatively small" given the size of

the unit. The level of permanent and temporary transfers herein is clearly not of a different magnitude than in *J & L Plate*.

Thus, notwithstanding the existence of similar skills, functions, and terms and conditions of employment, as well as the integration of certain aspects of the Employer's operations and administration, I conclude that the high degree of local autonomy retained at the branch level warrants finding the petitioned-for unit appropriate. *Bowie Hall Trucking*, supra. Accordingly, I find that the presumption of appropriateness of a single-facility unit has not been rebutted.

As to the proposed unit at the Ann Arbor facility, the parties differ only as to the refurbishing employees, whom the Employer, contrary to the Petitioner, maintains should be included in the unit. As noted above, the three full-time and two part-time refurbishing employees all work in the refurbishing room of the Ann Arbor facility under the immediate supervision of Asset Manager Jim Knight, who also supervises the installers, a classification which both parties agree should be included in the unit. Installers also perform work in the refurbishing room and sometimes also perform refurbishing work.

The Board, in evaluating the community of interest of employees, considers the nature and skill of employee functions, the situs of the work, the degree of common supervision, working conditions, and fringe benefits, interchange, and the contact among employees, the functional integration of the facility, and bargaining history. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

Here, the refurbishing employees perform work similar to and, in some cases, the same as other unit employees, under the same immediate supervision as the installers, in the same facility, wearing the same uniform shirt, punching the same time clock, and sometimes, like the service technicians and installers, performing work at customer locations. Under these circumstances, and with no evidence of bargaining history, I conclude that the refurbishing employees share an overriding community of interest with other unit employees so as to mandate their inclusion in the unit.¹⁰

5. For the above reasons, and based on the record as a whole, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

All full-time and regular part-time vending route
drivers, relief vending route drivers, field service

¹⁰ As the Petitioner has indicated a desire to participate in an election in any unit found appropriate herein, an administrative review of the Petitioner's showing of interest indicates that it is sufficient.

technicians, lead service technicians¹¹, installers, shuttle drivers, and refurbishing employees employed at or out of the Employer's facility located at 669 State Circle Drive, Ann Arbor, Michigan; but excluding administrative assistant, human resources employees, office clerical employees¹², and guards and supervisors as defined in the Act.

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

Dated at Detroit, Michigan this 5th day of September, 2000.

(SEAL)

/s/ William C. Schaub, Jr.
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¹¹ The Petitioner contended that Lead Service Technician Rick Whipple should be excluded as a Section 2(11) supervisor. The evidence indicates that Whipple possesses none of the supervisory criteria set forth in Section 2(11) of the Act, but simply transmits service orders to other service technicians, and spends most of his time performing the same service technician functions as the other service technicians. Under these circumstances, I find that the lead service technician is not a statutory supervisor, and is included in the unit.

¹² The parties agree, and I conclude, that Administrative Assistant Heather Arreguin is primarily employed as an office clerical employee and is excluded on that basis.