



5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*All drivers and helpers employed by the Employer at its Sandusky, Ohio facility, excluding mechanics, office clerical employees and professional employees, guards and supervisors as defined in the Act.*

There are approximately 44 employees in the unit found to be appropriate.<sup>3</sup>

The sole issue presented at the hearing was the composition of the bargaining unit. Petitioner requests that the unit consist of all drivers and helpers employed by the Employer at its Sandusky, Ohio facility while the Employer seeks to include, as part of the unit, the mechanics employed at the same location.

Petitioner requests inclusion in the unit of all drivers and helpers who perform residential and commercial waste pickup work as well as two other drivers, a container delivery driver and transfer/recyclery driver.

At the hearing, one witness, David Vossmer, the former division manager of the Employer's Sandusky District, testified at the request of the Employer. Petitioner called no witnesses.

## **1. THE FACTS**

The Employer, Browning Ferris Industries of Ohio, Inc., is an Ohio corporation engaged in the business of waste collection. The facility in issue is located in Sandusky, Ohio and employs about 65 individuals. The building houses offices, a maintenance shop, a transfer/recyclery section and has space for employee and truck parking surrounding the

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<sup>2</sup> The Petitioner's name is as reflected on the Petition.

building. Of the 65 employees located at the facility, there are approximately 42 drivers and helpers and 12 mechanics in addition to various management, supervisory, sales and clerical staff.<sup>4</sup> The 42 drivers and helpers collect waste from residential and commercial customers using a variety of trucks. Of the 12 employees the Employer considers to be mechanics, two employees perform significant driving activities, one as a container delivery truck driver and the other as a transfer/recyclery driver. The other mechanics perform maintenance and repair work on the trucks. The mechanics are grouped according to skill level, into the following five classifications: "A", "B", "C", "D", and trainee.

About seven different types of trucks operate out of the facility: front-loaders, roll-off trucks, rear loaders, pickup trucks, a tractor trailer, a caterpillar tractor and a roll-off container truck. There are about 30 trucks on the road each day. Front-loaders and roll-off trucks are used for commercial pickup while the rear loaders and pickup trucks are utilized for residential work. The tractor trailer is driven by the transfer/recyclery driver to haul waste from the transfer station to the landfill. He also uses a caterpillar tractor to perform work in the transfer station.<sup>5</sup> A container delivery driver operates the container truck which has been described as similar to a roll-off truck but with a long flat bed body used to haul three to five containers at a time.

The front-loader drivers begin work at 3:00 a.m. while the roll-off residential drivers start between 4:00 a.m. to 5:00 a.m. and the remaining drivers commence work at various times between 4:00 a.m. to 6:00 a.m. The container delivery driver works from 7:00 a.m. to 4:00 or

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<sup>3</sup> This number includes the approximately 42 drivers and helpers who perform residential and commercial waste collection work as well as the container delivery driver and transfer station/recyclery driver.

<sup>4</sup> At the hearing the parties agreed that there are approximately 42 drivers and helpers. The 12 employees the Employer contends are mechanics include a container delivery driver and a transfer station/recyclery driver.

5:00 p.m. while the shift for the transfer station/recyclery driver is from 6:00 a.m. to 4:00 p.m. If the drivers finish their route early they may leave. The mechanics work various shifts, each lasting from 8 to 10 hours a day, and are on duty from 4:00 a.m. to 1:00 a.m. At least two mechanics are on duty at all times between these hours.

The drivers and helpers spend most of their day away from the facility. Prior to leaving on their routes in the morning they spend about 15 to 30 minutes at the garage doing a pre-trip inspection report (these reports are referred to as vehicle condition reports or "VCRs") as to the condition of their vehicle. At the end of each day a similar amount of time is spent doing a post-trip report. During the day drivers and helpers may return to the facility to have lunch although they may elect to have lunch on the road or not at all. On unusual occasions they may also return if their vehicle is defective or in need of repair.

The container delivery driver spends most of his day operating the container delivery truck making deliveries and picking up containers from customers. Occasionally he performs welding activities at the facility. The transfer station/recyclery driver works out of the transfer station operating a tractor trailer to haul waste to landfills or drives a caterpillar tractor in the station itself. Mechanics work primarily at the facility. They leave the facility occasionally when a truck needs repair on the road. On these few occasions they either drive a pick up truck to the site of the breakdown to make repairs or drive a replacement truck to the site.

Supervision of the mechanics is performed by a shop manager while the drivers and helpers are supervised by the operation manager. The operations manager is Dan Haldeman and the shop manager is Ron Grosjean. Both managers report to the division manager. Until about December 1999 David Vossmer was the division manager. He was appointed division manager

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<sup>5</sup> The recyclery/transfer station is located next to the shop. Small loads of trash are deposited

for the Ottawa County Landfill at that time and the current Sandusky division manager is Ron VanZee.

## II. ANALYSIS

It is well established that the Act requires only that a petitioner seek an appropriate unit, and not the most comprehensive or most appropriate unit. See Overnite Transportation Company, 322 NLRB 723 (1996); Capital Bakers, 168 NLRB 904 (1967); and Morand Brothers Beverage Co., 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir. 1950). In deciding this issue, the Board first considers the petition and determines whether the unit sought is appropriate since a petitioner's desire concerning the composition of the unit which it seeks to represent constitutes a relevant consideration. Marks Oxygen Company of Alabama, 147 NLRB 228 (1964).

In determining the appropriate bargaining unit the Board's focus is on whether the employees share a "community of interest". Overnite Transportation Company, supra at 724 (quoting NLRB v. Action Automotive, 469 U.S. 490 (1985)). The Board has held that in arriving at an appropriate unit determination it weighs various community of interest factors including:

"[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and time spent away from the employment or plant situs under State or Federal regulations; the infrequency or lack of contact, with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining." Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

In cases in which the issue has involved the composition of appropriate bargaining units in facilities with both truck drivers and mechanics the Board has found that a determination of an

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there. Such loads are then gathered into a large load and hauled to a landfill.

appropriate unit depends upon the specific facts of each case. **Overnite Transportation Company**, supra at 724. The Board found in **Overnite** that it was appropriate to exclude mechanics from a petitioned-for unit of drivers and dock employees where the mechanics were separately supervised, did not regularly interchange with drivers and dock employees, had specialized skills and training and had separate terms and conditions of employment including paid uniforms and different hours of work. **Id. at 724**; see also **Overnite Transportation Company**, 322 NLRB 347 (1996).

Based on the foregoing principles, I conclude that the petitioned-for unit of drivers and helpers, excluding mechanics, is an appropriate unit in which to conduct an election.

In so finding it is apparent from the record that the drivers and helpers working out of the Sandusky facility perform significantly different duties than the mechanics. In addition I find they have different skills, work different hours, have different supervision and pay rates, and separate supervision. Moreover, there is limited interaction between the two groups at the site. The drivers and helpers work primarily on the road while the mechanics are based and work, for the most part, at the facility itself.

The drivers and helpers both spend most, if not all, of their work day away from the facility. The interaction of these two groups is significant with the helpers loading the trucks for the residential drivers. Their days are spent together working their assigned routes. The drivers and where applicable, their helpers, begin work at various early morning hours beginning at 3:00 a.m. The first 15 to 30 minutes is spent at the facility preparing a pre-inspection report (VCR) as to the condition of the truck. After that these employees are out on the road picking up and disposing of waste from residential and commercial customers. Other than an optional return for lunch or the need for infrequent mechanical repairs these employees do not return to the facility

except at the end of their day where they again spend a short period of time to complete a post inspection report.

As opposed to the drivers and helpers who spend all of their day together, the same cannot be said for the interaction of the mechanics with the drivers and helpers. During a mechanic's day, 80 to 90% is spent at the facility making repairs to the trucks and performing maintenance work. Although they are on duty when the drivers and helpers are working, their work shifts do not coincide with the hours of the drivers and helpers. Mechanics work from about 4:00 a.m. to 1:00 a.m. the next morning. Only on occasion do the mechanics leave the facility. This occurs, as a rule, when they attend to trucks which are in need of repair or disabled on the road but it is clear these are infrequent occurrences. The mechanics also infrequently drive replacement trucks to drivers who have had breakdowns on the road but again these actions are not routine as evidenced, in part, by the fact that only two of the mechanics even possess commercial driver's licenses (CDLs) which legally would permit such activity.

As to the integration of the facility itself, although it is clear the entire operation in Sandusky is under the control of the division manager, it is equally clear there is a division between the drivers and helpers and the mechanics with the two groups reporting to separate supervisors. This division exemplifies the separate functions and duties of the groups and the lack of a cohesive, integrated operation between them. Drivers and helpers have their schedules and daily activities provided by the operations manager. They pick up their assigned trucks, inspect them and go on their routes. Mechanics who are supervised by a shop manager obtain information as to needed repairs to the trucks from reports from the drivers either orally in person or by radio or through written VCRs. Repairs are made at various times of the day. Mechanics work until 1:00 a.m., long after the drivers and helpers have finished their work for

the day. Although some interaction is inevitable, each group of employees acts independently of the other in performing their assigned duties and tasks. Intermingling of duties does not occur on any frequent or recurring basis. Only on rare occasion are the employees in the mechanical department assigned to commercial and residential driving duties and these are for road repair activities. When any of the employees assigned to the mechanical department are called upon to substitute for the waste collection drivers it generally has been the two drivers in the group, the delivery container driver and the transfer station/recyclery driver. The degree of integration at the Sandusky facility does not rise to a level that leads to a conclusion that the drivers and helpers share such a community of interest with the mechanics so that the only appropriate unit herein must include all of them.

There is a significant difference between the skills of the drivers and helpers as opposed to the mechanics. All of the drivers hold a CDL in order to perform their job and must complete a road test given by the Employer. Only two of the mechanics hold such a license. There is no requirement that mechanics hold any kind of license. A mechanic must possess mechanical abilities as determined by the shop manager. They provide their own tools and, depending upon their classification, possess the skills to rebuild engines and make major repairs to the Employer's fleet of trucks. Although it has been suggested that the mechanics with CDLs could fill in as replacements for drivers if a shortage of manpower occurred, there is no evidence this has happened in the recent past. There is no requirement the drivers or helpers have any mechanical skills or aptitudes and, at best, they perform only minor mechanical work on the road, such as changing fuses or tightening up a hose. The drivers and helpers also report to a different supervisor than the mechanics. Drivers and helpers report to the operations manager,

Dan Haldeman, who oversees the system and sets up schedules. Ron Grosjean, the shop manager supervises the mechanics, making sure the trucks are repaired and ready for service.

The interaction between the drivers and helpers, and the mechanics is limited. Since drivers and helpers spend most of their day on the road and mechanics at the facility, such interaction occurs either during the morning or evening periods when the VCR reports are prepared by the drivers, the occasional communication during the day when drivers report truck malfunctions or the instances where mechanics make road calls to disabled trucks. The trucks are linked to the facility via radio. Each truck is equipped with a radio and one is located at the facility in the shop area. Drivers and helpers do not perform the mechanics' duties at the facility and generally spend little work time there.

Although the drivers and helpers along with the mechanics share the same locker room facilities, lunch room time clock and use the same employee handbook there is evidence that some disparity of benefits exists. This is most evident as to the wages paid to the employees. The pay scales differ with drivers and helpers having an incentive pay system with a base pay from \$9.00 an hour to \$13.00 an hour and the mechanics having a straight hourly pay ranging from \$8.25 an hour to \$14.25 an hour.

Petitioner has in the past filed petitions seeking to represent employees of the Employer. In petitions filed in 1994 and 1995 it sought to represent "all drivers, helpers and mechanics employed by [BFI] at its Sandusky, Ohio facility"<sup>6</sup> Both petitions resulted in stipulated election agreements, Petitioner was unsuccessful in obtaining a majority in the elections which followed. The Board does not consider itself bound by a collective-bargaining history resulting from a consent election conducted pursuant to a unit stipulated by the parties rather than one determined

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<sup>6</sup> Employer's Exhibits 11 and 12.

by the Board. **Mid-West Abrasive Co.**, 145 NLRB 1665 (1964); and **Macy's San Francisco**, 120 NLRB 69, 71 (1958). There is also evidence that Petitioner has organized other of the Employer's districts and these units are composed of drivers, helpers and mechanics. The Board does not require a union to seek the same unit at different locations of the same employer even where there is a collective bargaining history in a broader unit at the other locations. **Overnite Transportation Company**, 322 NLRB 723, 724 (1996).

As noted above, the Employer employs a container delivery driver and a transfer station/recyclery driver. Both of the positions are under the supervision of the shop manager, the same individual who supervises the mechanics. For the reasons which follow I find these positions share a community of interest with the drivers and helpers and should be included in the bargaining unit.

The container delivery driver has the job of taking waste collection containers to new clients or to replace damaged containers for current customers. He works under the shop manager in the mechanical group because in addition to his driving duties he performs a limited amount of welding at the facility.

The Board has held that dual function employees who perform more than one function for the same employer may be considered part of the bargaining unit and entitled to vote if they perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate they have a substantial interest in working conditions in the unit. **Continental Cablevision**, 298 NLRB 973 (1990); **Alpha School Bus Co.**, 287 NLRB 698 (1987); and **Oxford Chemicals**, 286 NLRB 187 (1987).

The primary duty of the container delivery driver is to drive a container delivery truck and he has some secondary welding responsibilities. Although the full extent of his welding

activities is not in evidence the degree of his welding duties has been described by Mr. Vossmer as being just a "little bit". In essence the container delivery truck is a modified roll-off truck, a vehicle with a large flat bed body capable of transporting multiple waste collection containers. As with the other drivers at the facility the container delivery driver must have a CDL. He works a shift similar to that of other drivers, working from 7:00 a.m. to 4:00 p.m. It is also clear the container delivery driver, unlike mechanics at the facility has often filled in for other truck drivers running waste collection routes. It was reported that he filled in as a spare driver almost 12 times in the last year.

Although the container delivery driver does report to the mechanical group, his duties, skills and activities are such that he shares a community of interest with the other drivers and helpers of the employer. Accordingly, I conclude the container delivery driver is to be included in the bargaining unit.

The transfer station/recyclery driver operates a tractor trailer and a caterpillar tractor out of the facilities' transfer station. There is no evidence he performs any significant duties other than operate these vehicles. He also reports to the shop manager.

As with the container delivery driver the transfer station/recyclery driver performs duties and has skills which reflect a community of interest with the drivers and helpers at the facility. His primary duty is to operate large trucks both on the road and at the transfer station. He is required to have a CDL. At least 50% of his time is spent operating a large tractor trailer on the road making deliveries of waste to a land fill while the remainder of the time is spent in the transfer station operating a large caterpillar tractor. Although adjacent to the transfer station is a separate area from the shop where the mechanics are employed. The transfer station/recyclery

driver has no mechanical duties but he has worked as a spare waste collection driver. The incumbent in the position previously worked as a roll-off driver.

Although the transfer station/recyclery driver has been designated to work in the mechanics group it is clear he has a community of interest with the drivers and helpers at the facility. His skills and duties place him squarely within those being performed by the waste collection drivers. Therefore, I find that he is included in the bargaining unit as requested by Petitioner.

Based upon the foregoing and the record as a whole, I find the Petitioner has petitioned for an election in an appropriate unit. I further find that the mechanics (with the exception of the container driver and the transfer station/recyclery driver) do not share such a community of interest with the drivers and helpers so as to compel their inclusion in the unit sought by the Petitioner.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Teamsters Local Union No. 571, affiliated with the International Brotherhood of Teamsters, AFL-CIO.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by **March 1, 2000.**

Dated at Cleveland, Ohio this 16<sup>th</sup> day of February 2000.

/s/ John Kollar

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John Kollar  
Acting Regional Director  
National Labor Relations Board  
Region 8

817-8150-7727-0000