

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

BOWLING TRANSPORTATION COMPANY, INC. ^{1/}

Employer

and

Case 9-RC-17361

TRUCK DRIVERS, CHAUFFEURS AND HELPERS,
LOCAL UNION NO. 100, AN AFFILIATE OF THE
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, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

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

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

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

^{1/} The name of the Employer appears as amended at the hearing.

5. The Employer, a corporation, is engaged in the intra and interstate transportation of freight at and out of several terminals located in the states of Ohio, Kentucky, Indiana and Michigan, within an approximately 400 miles radius. In conducting its business, the Employer employs over-the-road drivers, intra-company drivers, mechanics, drop lot employees, truck masters, dispatchers and various managers and supervisors. In addition, the Employer utilizes approximately 51 owner/operators or leasee/operators, whom neither party contends should be included in any unit found appropriate.

The Employer is engaged primarily in the over-the-road transportation of steel and steel products for AK Steel, its primary customer, U.S. Steel, Bethlehem Steel and other major steel producers. In addition, the Employer provides on site transportation of steel products for AK Steel at the latter's Middletown, Ohio and Rockport, Indiana facilities. In carrying out its business, the Employer has a terminal at Portage, Indiana, where it employs three dispatchers and five mechanics and a terminal at Detroit, Michigan where it employs a dispatcher. In addition, the Employer employs 22 over-the-road drivers who apparently operate primarily out of the Portage and Detroit area but who make runs to and may be dispatched out of other locations. The Employer also has a facility at Wayne, Ohio, where it employs seven mechanics and six dispatchers. This facility also houses the Employer's personnel and payroll offices. The Employer operates a terminal at Rockport, Indiana, which is located, as previously noted, on the premises of AK Steel, where it employs five intra-company drivers^{2/} and four drop lot employees, and a terminal at Owensboro, Kentucky, where it employs two mechanics and 14 over-the-road drivers. Finally, the Employer has a facility at Middletown, Ohio, located on the property of AK Steel, where it employs approximately 37 intra-company drivers, 13 mechanics, 3 truck masters and 2 dispatchers. There is no history of collective bargaining affecting any of the Employer's employees.

The Petitioner seeks to represent a unit essentially comprising of approximate 37 intra-company drivers employed by the Employer at the Middletown facility, excluding all other employees, and all professional employees, guards and supervisors as defined in the Act. The Employer contends that any appropriate unit must include, in addition to the intra-company drivers at Middletown, all over-the-road drivers, all other intra-company drivers at its other facilities, and all dispatchers, drop lot employees and mechanics regardless of the facility to which they are assigned. Thus, the Employer essentially takes the position that only an employer-wide unit is appropriate for the purposes of collective bargaining. Contrary to the Employer, the Petitioner would also exclude the three truck masters at the Middletown terminal from the unit on the ground that they are supervisors within the meaning of Section 2(11) of the Act. Finally, the Petitioner expressed a willingness to proceed to an election if a different unit from the one in which it seeks certification is found appropriate. However, it is not clear whether the Petitioner would be willing to proceed to an election in the all inclusive employer-wide unit which the Employer maintains is appropriate.

^{2/} It appears from the record that the on-site work at Rockport may soon be phased out as a result of automation.

Unit Scope:

The Petitioner, as previously noted, seeks to represent a unit limited to all intra-company drivers employed by the Employer at its Middletown, Ohio operation. On the other hand, the Employer maintains that only an employer-wide unit, including all of its drivers (intra-company and over-the-road), mechanics, dispatchers and drop lot employees, regardless of their work locations, is appropriate for the purposes of collective bargaining. The Employer's terminals are located in four states separated by considerable geographical distances. For example, it is approximately 300 miles from Owensboro, Kentucky to Portage, Indiana; 225 miles from Portage to Detroit, Michigan; 100 miles from Detroit to Wayne, Ohio; 175 miles from Wayne to Middletown, Ohio; and 225 miles from Middletown to Rockport, Indiana.

The Employer's president, William Bowling, currently works at the Portage, Indiana terminal and is apparently in charge of the day-to-day operations of that facility. The Employer's vice-president, Donald Bowling, is located at Middletown and has overall responsibility for the operation of that facility, while his sister and the Employer's secretary-treasurer, Joanne May, works at, and is apparently responsible for the day-to-day operations of the Wayne facility. Operations Manager L. J. Martin, is responsible for the Owensboro operation and Operations Manager/Sales Representative Richard Henry is apparently in charge of the day-to-day operations at Detroit, Michigan. It also appears that Martin has supervisory authority over the Rockport, Indiana terminal. In addition to the above officials, managers and supervisors, the Employer employs a human resources manager, Elizabeth Brown, and a safety director, Larry Neely, who have their offices at the Middletown terminal. The record discloses that the operation managers and other members of supervision report to President William Bowling or Vice-President Donald Bowling who have overall managerial responsibility and authority at all facilities and are ultimately responsible for all major personnel decisions. However, it appears clear from the record that on site supervisors make daily operational decisions and manage the work force on a day-to-day basis.

All employees, regardless of their classification and work location, are entitled to the same health insurance and other employee benefits. Moreover, the wage rates for similar job classifications appear to be the same throughout the Employer's operation and payrolls are processed and paychecks are issued out of the Wayne, Ohio terminal. Although personnel records for most employees are kept at the terminal to which they are assigned, the record shows that duplicate personnel records are maintained at the Wayne facility. It also appears from the record that personnel manuals, work rules, safety programs and government regulations apply to all employees throughout the Employer's corporate system.

The record discloses that some employees from Middletown traveled to Rockport to train the drivers at that location after the Employer obtained the contract from AK Steel for the on-site transportation of freight at that terminal. However, such training appears to have been of short duration. In addition, it appears that there may have been one permanent transfer of an employee from the Employer's Middletown facility to another of its locations and, at least, one mechanic from the Wayne terminal has occasionally worked at other facilities, including Middletown. The over-the-road drivers apparently make pickups and deliveries at all locations and occasionally perform some local work, at least, at the Middletown facility. The over-the-road drivers are also

dispatched by dispatchers permanently assigned to terminals throughout the Employer's system and mechanics who are permanently assigned to a facility may repair trucks operated by over-the-road drivers operating out of other facilities. However, it is clear that there are no temporary interchange of employees in any classifications between the various facilities and except for the over-the-road drivers, there is no daily contact between employees of the different terminals. Finally, the record discloses that all facilities have separate front line supervisors who are responsible for the day-to-day operation of their respective terminals.

At the hearing and in its brief, the Employer argues that there is a sufficient community of interest among all employees at all of its locations to require their inclusion in the same employer-wide unit. I note, however, that the general rule is that a single plant unit is presumptively appropriate, unless the employees at the plant (terminal) have been merged into a more comprehensive unit by bargaining history or such employees have been so integrated with employees in other facilities causing the single plant unit to lose its separate identity. *Centurion Auto Transport, Inc.*, 329 NLRB No. 42 (1999); *National Cash Register Company*, 166 NLRB 173 (1967). When a labor organization seeks, as here, a presumptively appropriate single facility unit, it is the employer's burden to rebut the presumption. *RB Associates, Incorporated*, 324 NLRB 874 (1997); *J & L Plate, Inc.*, 310 NLRB 429 (1993).

The factors relied on by the Board in determining whether the appropriateness of a single facility unit has been rebutted are: prior bargaining history, the extent of interchange of employees, the work contacts existing among the groups of employees, the extent of functional integration of operations, the physical and geographical location in relationship to each of the facilities and the centralization of management, supervision and particularly labor relations. *RB Associates, Incorporated*, supra; *Transcontinental Bus Systems, Inc.*, 178 NLRB 712 (1969); *Rohm & Haas Co.*, 183 NLRB 147 (1970). In analyzing these factors, I note the substantial geographic separation of the various facilities. *Capital Bakers, Inc.*, 168 NLRB 904 (1968). Moreover, the record reflects substantial authority by local management officials which establishes the local autonomy of the various facilities and militates in favor of the appropriateness of a single facility unit. *Equitable Life Assurance Society of the United States*, 192 NLRB 544 (1971). I also note the lack of any daily or temporary employee interchange or transfer of employees among the facilities and the almost complete lack of any work related contact between employees of the various facilities. *Rohm & Haas Co.*, supra; *J & L Plate, Inc.*, supra. In addition, there is no bargaining history on a broader basis and that no other labor organization is seeking to represent a more comprehensive unit. *Transcontinental Bus Systems, Inc.*, supra; *Welsh Co.*, 146 NLRB 713 (1964). Finally, although not determinative, the scope of the unit sought by a petitioning labor organization is a relevant consideration. *Metropolitan Life Assurance Co.*, 156 NLRB 1408 (1966).

In its brief and at the hearing, the Employer argues that all employees throughout its four state operations are subject to the same personnel manuals, safety procedures, hazardous communication programs, substance abuse policy and other federal, state and Employer regulatory policies and are entitled to the same fringe benefits. Thus, the Employer asserts that such common factors among its employees establishes a common community of interest requiring their inclusion in the same (employer-wide) unit. The Employer has not cited, and I am not aware of, any case in which the Board has relied on such corporate-wide policies to

overcome the presumption that a single facility unit is appropriate. To the contrary, in *Alterman Transport Lines, Inc.*, 178 NLRB 122 (1969), the Board gave insignificant weight to such common corporate and governmental policies and regulations in finding a number of single terminal units of the employer's local drivers to be appropriate. See also, *Groendyke Transport, Inc.*, 171 NLRB 997 (1968).

Based on the foregoing, the entire record and the arguments of the parties at the hearing and in their briefs, I find that the Employer has not rebutted the presumption that a single facility unit is appropriate. *Bowie Hall Trucking Inc.*, 290 NLRB 41 (1988); *Esco Corporation*, 298 NLRB 837 (1990). Accordingly, I find that a unit limited to the Employer's Middletown terminal is appropriate for collective bargaining. *Centurion Auto Transport, Inc.*, *supra*; *Esco Corporation*, *supra*.

Unit Composition:

Having found that the scope of the unit may be limited to the Employer's Middletown terminal, I must now determine whether the composition of the unit sought by the Petitioner at this facility is appropriate for collective bargaining. The 37 intra-company drivers employed by the Employer at Middletown, whom the Petitioner seeks to represent, primarily operate trucks moving steel coils on the premises of AK Steel. Although a small number of trucks used in this operation were previously over-the-road vehicles, most of the tractors and trailers utilized to move the coils are specifically designed to handle heavy loads. Indeed, most of the loads weigh in excess of 200,000 pounds and can weigh as much as 325,000 pounds. The coils are loaded by cranes operated by AK Steel employees. The coils are secured by a special "cradle system" and, unlike over-the-road loads, the coils are not chained down and covered by a tarp. The on site vehicles are not designed to travel on the public roadways and, in fact, the maximum weight that may be transported on highways is 160,000 pounds.

The record discloses that some of the intra-company drivers are assigned to "dedicated" doors at the AK Steel facility on a daily basis and have assigned runs. However, most intra-company drivers are not assigned to specific doors but are assigned as needed, and even those drivers with "dedicated" doors are subject to reassignment to handle "hot" or emergency loads designated by AK Steel. The intra-company drivers are also assigned to what is referred to as annealing and electrogalvanized (EG) runs which are special assignments. The drivers rotate on these runs for which they receive an hourly rate of pay rather than incentive pay they receive for other work. Finally, the intra-company drivers, until recently, moved sludge. However, there has been a recent change in the moving of sludge which is now being transported to a facility in Cincinnati, Ohio. Although not completely clear from the record, it appears that an unrelated company, Onyx, is transporting the sludge to the Cincinnati dump. However, the Employer has apparently obtained a new contract with AK Steel to process waste material (sludge) in which it is utilizing some intra-company drivers and mechanics and which may ultimately be transported by over-the-road drivers. It is not clear from the record whether this work will continue and if it does how it will be performed in the future.

Although the intra-company drivers do not travel on highways, they are required to cross a public road to deliver products to Processing Strip, which is a warehouse used by AK Steel to

store products prior to shipping them to its customers. Thus, the intra-company drivers must have a valid commercial driver's license. In addition, the intra-company drivers make an occasional pickup or delivery of equipment needed by the Employer in its operation which requires them to drive on interstate highways. However, the intra-company drivers do not make over-the-road deliveries for AK Steel or other customers of the Employer. The intra-company drivers are required to complete records (logs) which they submit at the end of the work day.

The intra-company drivers are picked up at the start and dropped off at the end, of their respective shifts at the gate which they are required to use to enter or exit AK Steel's premises by one of the three truck masters in a pickup truck owned by the Employer. The pickup truck is equipped with a cell phone, a radio and a time clock. The intra-company drivers clock in and out on the time clock located in the truck. The pay for the intra-company drivers for the most part is determined by the number of loads they transport each day. Thus, the more deliveries they make the more they earn. However, the intra-company drivers receive an hourly rate of \$13 to \$13.50 for certain work such as the annealing and sludge deliveries. In addition, any overtime pay for the intra-company drivers is based on the average hourly wage they earned during the overtime period. The intra-company drivers are entitled to the same fringe benefits received by all other employees. In addition, the intra-company drivers are provided uniforms and are subject to the same personnel and safety procedures applicable to all employees. The intra-company drivers are also required to attend periodic safety meetings. It appears that the safety meetings are sometimes attended by only the intra-company drivers but occasionally they attend such meetings with other employees.

The record shows that the Employer provides AK Steel with intra-company drivers 24-hours a day, 7 days a week. In order to provide coverage around the clock, some intra-company drivers work a 12-hour shift for 4 consecutive days and are then off for 4 days, while others work 6 days and are off 2 days or other schedule variations to assure adequate coverage. The record discloses that a few intra-company drivers have "dedicated doors" to which they are assigned on a daily basis but most are assigned work by one of the truck masters based on instructions from AK Steel or the senior truck master. The senior truck master, Robert Ayen, who, in turn reports to Vice-President Donald Bowling, is the immediate front line supervisor over the intra-company drivers. Ayen is assisted by three truck masters who transport employees, relay work orders from Ayen and AK. Steel management to the intra-company drivers, summon mechanics when necessary and prepare incident and accident reports.

Over-the-Road Drivers:

The Employer, as previously noted, would include its 36 over-the-road drivers in any unit found appropriate. The Petitioner maintains that none of these drivers share such a community of interest with the intra-company drivers at Middletown to require their inclusion in the same unit. Although none of the over-the-road drivers are actually domiciled at Middletown and arguably not included within the scope of the unit found appropriate, the record shows that 22 of the over-the-road drivers appear to service all locations and even the 14 drivers located in Owensboro make pickup and deliveries to other terminals, including Middletown. Moreover, the over-the-road drivers are often dispatched out of the Middletown facility and occasionally perform work at that terminal. Under such circumstances, notwithstanding that they are not

specifically assigned to the Middletown terminal, I must consider whether the over-the-road drivers share such a sufficient community of interest with the intra-company drivers at Middletown to mandate their inclusion in the same unit.

The over-the-road drivers haul products for AK Steel and other customers, primarily steel manufacturers of the Employer. The over-the-road drivers operate tractors which pull primarily flat bed trailers on which steel coils, weighing as much as 160,000 pounds, are chained down and covered by tarp. The record discloses that 14 of the over-the-road drivers are domiciled at Owensboro, Kentucky, while the remaining 22 apparently haul primarily out of Portage, Indiana or Detroit, Michigan but do not appear to be permanently assigned to any terminal. The personnel files for the over-the-road drivers are maintained only at the Employer's main office in Wayne, Ohio and all the over-the-road drivers are under the direct supervision of William and Donald Bowling. Moreover, unlike other aspects of the Employer's business, the over-the-road operation apparently constitutes a separate division.

The over-the-road drivers generally start their work week on Sunday night when their trucks are loaded and they commence their initial runs for the week. The over-the-road drivers are subject to DOT regulations and must keep logs showing, inter alia, that they receive the proper amount of rest. All over-the-road drivers may be required to pickup or deliver freight to any of the Employer's facilities or to those of its customers. After a trailer is unloaded, the over-the-road driver is required to contact the nearest terminal of the Employer where a permanently located dispatcher will assign the driver a new load.

The tractors and trailers operated by the over-the-road drivers are owned by the Employer. It appears that some of the over-the-road trucks as well as on-site vehicles have names on the cab doors such as Hoosier Express, RMB or Bowling Transportation. It is not clear from the record why the names on the trucks vary, but the evidence shows that all the employees in question are employed exclusively by the Employer. In making their deliveries, over-the-road drivers have some freedom in selecting their routes which, as discussed below, could have an impact on their pay. However, each over-the-road vehicle has a device which enables the Employer to monitor the driver's route and time spent on the road.

All over-the-road drivers apparently, at least on occasions, pick up and deliver freight to AK Steel's Middletown facility or to Precision Strip, and are dispatched out of the Middletown terminal when they make deliveries in that geographic area. The record discloses that, at least, some of the over-the-road drivers occasionally have been assigned to perform on-site work at AK Steel's Middletown facility. Such assignments usually occur when an over-the-road driver has down time at Middletown and when the Employer is confronted with an emergency or during busy periods on weekends or holidays when the Employer has only a limited number of intra-company drivers on site. There also have been a few occasions when intra-company drivers have been given over-the-road assignments. For example, one intra-company driver was hired 2 or 3 weeks before the Employer commenced its on-site work. The employee drove over-the-road for those 2 or 3 weeks waiting for the on site work to commence. On another occasion, an intra-company driver was barred by AK Steel from its premises for a 30-day period because of an accident. The Employer used the employee as an over-the-road driver during that 30 day period.

Over-the-road drivers receive a percentage (25 to 30 percent) of the total amount grossed by the Employer for each load they deliver, except on those few occasions when they perform on-site work. On those occasions, the over-the-road drivers are compensated in the same manner as the intra-company drivers. The over-the-road drivers are entitled to the same health insurance, retirement benefits, 401(K) plan and other fringe benefits available to all other employees. The over-the-road drivers are also subject to the same substance abuse and other safety and personnel policies applicable to other employees. However, it appears that the over-the-road drivers, at least at this time, have their own drivers' manual but there is some indication in the record that the manual is being revised and will be made applicable to all drivers.

Section 9(a) of the Act requires only that the unit sought by a petitioning labor organization be an appropriate unit for the purposes of collective bargaining, and there is nothing in the Statute which requires that the unit be the only appropriate unit, the ultimate unit or even the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 418, 419 (1950), enf'd. 190 F.2d 576 (7th Cir. 1951); *Overnite Transportation Company*, 322 NLRB 723 (1996). The unit sought by a petitioning labor organization, while not controlling, is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees, unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Company*, supra; *The Lundy Packing Company, Inc.*, 314 NLRB 1042, 1043 (1994). Thus, I need only determine whether the intra-company drivers, whom the Petitioner seeks to represent, excluding the over-the-road drivers, constitutes an appropriate unit. Community of interest factors considered by the Board in determining whether groups of employees constitute appropriate collective bargaining units include the employer's organizational structure, the degree of functional integration, employee interchange and contact and whether the employees share common supervision, skills, functions, work locations, wages, benefits and working conditions. *ACL Corporation d/b/a Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984); *United States Steel Corporation*, 192 NLRB 58, 60 (1971).

Having carefully weighed all the relevant factors, I am convinced that the record does not establish that the over-the-road drivers share such a community of interest with the employees sought by the Petitioner to mandate their inclusion in the unit. Initially, I note that the over-the-road drivers are not permanently assigned to the Middletown terminal and work in their own operational division. Moreover, the over-the-road drivers operate different vehicles, are dispatched in a different manner and have different immediate supervision from the intra-company drivers. Moreover, the over-the-road drivers do not punch a time clock and are paid in a different manner than the intra-company drivers. Although the over-the-road drivers occasionally perform on-site hauling and intra-company drivers have drove over-the-road under special circumstances, the record does not disclose any day-to-day interchange among the over-the-road drivers and intra-company drivers. In addition, any work related contact between the over-the-road drivers and intra-company drivers is minimal and occurs only in special circumstances. Finally, no other labor organization is seeking to represent the over-the-road and intra-company drivers in the same or a broader unit and there is no history of collective bargaining on a broader basis.

The Employer's argument at the hearing that a stipulated election agreement between the Petitioner and the Employer's predecessor, J. P. Transportation, Inc., Case 9-RC-16819, in which the parties included in the same unit the over-the-road and local drivers at this location, constitutes a bargaining history or authority to include the over-the-road drivers here is without merit. Initially, the Board does not consider itself bound by a collective-bargaining history resulting from a unit stipulated by the parties rather than one determined by the Board. *Mid-West Abrasive Company*, 145 NLRB 1665 (1964); *Macy's San Francisco and Seligman & Latz, Inc.*, 120 NLRB 69, 71 (1958). This is particularly true where, as here, the stipulation was between the Petitioner and the Employer's predecessor and there is no evidence as to the predecessor's operations.

The one case cited by the Employer in its brief, *Ploof Transfer Company, Inc.*, 220 NLRB 719 (1975), does not support its position that the over-the-road drivers must be included in the same unit with the intra-company drivers. In *Ploof*, the Board granted Counsel for the General Counsel's motion for summary judgment in a test of certification case where the employer refused to bargain based on alleged misconduct by the union during an election campaign. The bargaining unit was comprised of over-the-road drivers, mechanics, mechanic helpers, yardmen and plant clerical employees. There is no indication that the employer in *Ploof* employed any intra-company or local drivers. More importantly, there is no indication that the appropriateness of the certified unit was ever litigated or even contested.

Based on the foregoing, the entire record and the arguments of the parties at the hearing and in their briefs, I find that a unit limited to the intra-company drivers, excluding the over-the-road drivers, is appropriate for the purposes of collective bargaining. In reaching this decision, I note that the Board has consistently found that local drivers, who are analogous to the intra-company drivers here, and over-the-road drivers constitute separate appropriate units where, as here, it is shown that they are clearly defined homogeneous and functionally distinct groups with interests that can effectively be represented separately for bargaining purposes. *Georgia Highway Express, Inc.*, 150 NLRB 1649, 1651 (1965); *Alterman Transport Lines, Inc.*, supra. Accordingly, I shall exclude the over-the-road drivers from the unit.

Mechanics:

I now turn to the issue of whether the mechanics at Middletown must be included in the unit of intra-company drivers. Contrary to the Petitioner, the Employer takes the position that its Middletown mechanics must be included in any unit found appropriate. The Employer, as previously noted, employs mechanics at a number of its facilities, including 13 at the Middletown terminal.

The 13 Middletown mechanics perform repairs and preventative maintenance for both on-site and over-the-road vehicles and fuel and wash the on-site equipment on a regularly scheduled basis. The mechanics work primarily in a garage consisting of three buildings separated by partitions. One of the buildings is the garage area in which mechanical and maintenance work is performed; one is used as a storage area for tires and other equipment; and the other houses the welding operation. The garage is separately located 100 yards from the main terminal office.

The mechanics apparently make most repairs in the garage but they may be summoned to the location of an on-site breakdown by a driver, the truck master or the senior truck master. The mechanics also make repairs at an outside location referred to as the "coal pile." It also appears that a mechanic may on occasion travel off site to perform mechanical work on over-the-road vehicles. The Middletown mechanics are apparently capable of handling most mechanical repairs, but the record indicates that some major repair work is sent to the Wayne, Ohio facility. The mechanics own their hand tools and the Employer furnishes the heavy equipment needed to perform the mechanical work.

The mechanics, like the intra-company drivers, work various schedules and shifts in order to cover the terminal on an around-the-clock basis. For example, a number of the mechanics work 4 days on and 4 days off, while others work a more standard 8 to 12-hour shift. In addition, the record indicates that two mechanics work a regularly scheduled night shift, Thursday through Sunday. The Employer's vice-president, Donald Bowling, has direct supervisory authority over the Middletown mechanics. However, Bowling is apparently assisted in scheduling mechanical work by three working shift leaders, apparently nonsupervisors, one of whom, Russ Sprecklemeier, is responsible for scheduling preventative maintenance for the equipment.

The mechanics punch a time clock located in the garage which is for their exclusive use. They are hourly paid at a rate of between \$10 and \$15 per hour. The mechanics are entitled to the same insurance, retirement benefits, 401(k) plan and other benefits available to all other employees. The mechanics are furnished uniforms which are apparently distinguishable from those worn by other employees. Mechanics attend regularly scheduled safety meetings which are, at least, on occasions attended by other employees. The mechanics, like other employees, are subject to the same substance abuse and other corporate personnel policies. However, the mechanics have separate lunch and break facilities.

The mechanics have contact with intra-company drivers when fueling the on-site vehicles and they may question drivers about problems the drivers are experiencing with equipment. In addition, intra-company drivers or one of the truck masters may contact a mechanic by cell phone or radio to discuss mechanical breakdowns of equipment or concerning needed repairs. However, there is no evidence that the intra-company drivers or other employees assist or work with mechanics in making repairs. Moreover, the intra-company drivers apparently do not perform routine maintenance on, or even fuel, their vehicles. Such tasks appear to be performed exclusively by the mechanics. The mechanics are not required to possess commercial driver's licenses but it appears that some may do so.

The record indicates that on several occasions in 1998 and 1999, one of the mechanic shift leaders, Mark Trent, performed some intra-company driving duties. Trent performed these duties in emergency situations and it is not clear whether he will be doing any of this work in the future. In addition, one intra-company driver had a problem with his insurance and worked in the garage for a short time until the matter was resolved. Finally, one intra-company driver lost his driving privileges as a result of a drunk driving conviction. Rather than terminating his employment, the Employer transferred him to a mechanic position. However, there is no

evidence of temporary interchange among the mechanics and intra-company drivers and an absence of substantial work-related contact among these employees.

The Board has held, as noted above under the discussion involving the over-the-road drivers, that there is nothing in the Statute which requires that the unit for bargaining be the only appropriate unit, the ultimate unit or even the most appropriate unit. The Act only requires that the unit be appropriate. *Overnite Transportation Company*, supra; *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991). A labor organization, therefore, is not required to seek representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with that requested does not exist. *Overnite Transportation Company*, supra; *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963). Moreover, the appropriateness of a requested bargaining unit must be considered on the particular facts of each case. *Overnite Transportation Company*, supra.

Here, the record discloses that the mechanics are separately supervised,^{3/} punch a separate time clock and are paid on a different basis than the intra-company drivers. Although there has been a minimal amount of interchange, temporary or permanent transfers of employees in unusual circumstances, there is no regular or even sporadic daily interchange between the mechanics and intra-company drivers. Moreover, the mechanics clearly possess specialized skills and there is little work-related contact with the intra-company drivers. Indeed, the intra-company drivers do not even perform routine maintenance on their vehicles and there is no evidence that they render any assistance to the mechanics in performing mechanical work. There is some contact between the two groups of employees in discussing needed repairs and all employees receive the same benefits and are subject to the same work rules. However, such factors do not require the inclusion of the mechanics in the same unit with the intra-company drivers. *Overnite Transportation Company*, supra, at n. 4. It is also noted that the Board in *Overnite Transportation Company*, supra, excluded mechanics from a driver's unit where there was substantially more integration of operations and work-related contact between the two groups of employees than exists in the subject case.

The cases cited by the Employer in its brief do not require the inclusion of the mechanics in the unit. In *Norfolk, Baltimore and Carolina Lines, Inc.*, 175 NLRB 209 (1969), the Board included a "single truck mechanic" who performed "minor truck repairs and maintenance" in a unit of drivers. Unlike in *Norfolk*, the mechanics here constitute a substantial homogeneous group with the specialized skills to perform all mechanical work. Thus, *Norfolk* does not support the Employer's position here that the mechanics must be included in the unit. Likewise, *Cotton Producers Association d/b/a CPA Trucking Agency, Boaz*, 185 NLRB 452 (1970), cited by the Employer, does not advance its position that the mechanics here must be included in the unit. The four mechanics in *Cotton* worked under the same immediate supervision as the drivers, performed only "minor repairs and maintenance" and occasionally drove trucks delivering the same products as the drivers. Thus, the Board included the mechanics in a unit with the drivers. Here, the mechanics make all repairs, own their own hand tools, work under separate immediate supervision and are paid differently than the drivers. Thus, the mechanics constitute a separate

^{3/} The immediate supervisor of the intra-company drivers is the senior truck master, Robert Ayen, while Vice-President Donald Bowling is the first line supervisor over the mechanics.

identifiable grouping of employees whose community of interest with the drivers is not sufficient to mandate their inclusion in the same unit. *Overnite Transportation Company*, supra.

Finally, *Indiana Refrigerator Lines, Inc.*, 157 NLRB 539 (1966), cited by the Employer, is inapposite. In *Indiana Refrigerator Lines*, the petitioning labor organization sought to include six mechanics, over the employer's objection, in a unit of drivers. The Board agreed that a unit of drivers and mechanics was appropriate and, under the circumstances, perhaps the optimum unit. The issue here is not whether a unit, including drivers and mechanics, could be appropriate but whether a unit of intra-company drivers, excluding the mechanics, sought by the Petitioner may also constitute an appropriate unit. Manifestly, under well established Board law, a unit of the Employer's intra-company drivers, excluding the mechanics, constitutes an appropriate unit. *Overnite Transportation Company*, supra.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the circumstances herein do not require the inclusion of the mechanics in the unit of intra-company drivers found appropriate. *Alterman Transport Lines, Inc.*, supra; *Overnite Transportation Company*, supra; See also, *Overnite Transportation Company*, 322 NLRB 347 (1996). Succinctly, the intra-company drivers and mechanics constitute separate homogeneous groupings of employees who are entitled to separate representation. *Overnite Transportation Company*, 322 NLRB at 726. Accordingly, I shall exclude the mechanics from the unit.

Truck Masters:

The Employer employs a senior truck master and three truck masters to oversee its on-site movement of freight at AK Steel's Middletown facility. The parties stipulated that the senior truck master, Robert Ayen, is a statutory supervisor. Contrary to the Employer, the Petitioner would also exclude the three truck masters, Rob Greenfield, Keith Snelling and Donald Henry, from the unit as supervisors within the meaning of Section 2(11) of the Act.

The record discloses that Ayen, who reports directly to Vice-President Donald Bowling, is the first line supervisor over the intra-company drivers but Bowling is also directly involved in the supervision of these employees. Ayen is salaried and works the day shift from approximately 6 or 7 a.m. to 6 p.m. The three truck masters work 4 days and are off 4 days. They work 12-hour shifts and are scheduled so that one of them is at the terminal at all times. The truck masters punch a time clock located in the pickup truck which they operate and are paid at a rate of \$13 to \$15 per hour. The Employer, at one time, apparently listed the truck masters as supervisors but no longer does so because of a ruling by the Department of Labor. The truck masters are entitled to the same insurance and other fringe benefits available to all employees.

Bowling meets with Ayen and other managers each morning to determine the work that is to be performed during the day. Ayen schedules the work for the intra-company drivers after consulting with AK Steel management concerning the work which needs to be performed. Ayen gives the schedule to the truck masters who relay the information to the intra-company drivers. During the shift, the truck masters apparently serve as a liaison between AK Steel management and intra-company drivers with respect to any change in the priority of work. If it becomes

necessary to pull an intra-company driver from an assignment to handle a “hot” job designated by AK Steel, the truck master will contact Ayen before reassigning a driver. If Ayen is not present, a truck master can reassign a driver in order to perform emergency jobs. In addition, the truck masters, in Ayen’s absence, can send a driver home if there is no work. It does not appear, however, that the truck masters are required to exercise any significant degree of independent judgment in making these decisions. The record shows that they would telephone Ayen or Bowling if confronted with a serious employment problem and have done so on many occasions.

The truck masters are responsible for preparing incident and accident reports involving the intra-company drivers. However, the truck masters merely submit these reports to Ayen who interviews the driver and independently investigates the incident before deciding whether discipline is appropriate. Indeed, the truck master involved apparently does not make any recommendations as to discipline and is not necessarily present during the interview of the driver.

The truck masters pick up and drop off the intra-company drivers at the gate used by the Employer’s employees to enter and exit AK Steel’s premises. The truck masters may also summon a mechanic if a truck breaks down or needs repair. Finally, the truck masters use a computer located in a trailer approximately 4 miles from the main terminal office to keep records of the work and activities of the intra-company drivers.

The current truck masters do not have commercial driver’s licenses and do not drive the on-site trucks, but the record indicates that prior truck masters operated these vehicles. There is absolutely no evidence that the truck masters have any authority to hire, discharge or discipline employees using independent judgment. Although the truck masters relay assignments and may reassign drivers if AK Steel notifies them of a “hot” or emergency job, it does not appear that independent judgment is required in performing these functions. Moreover, a decision to send an employee home when there is no work does not require the use of independent judgment. The truck masters do not evaluate employees or recommend them for promotion or wage increases. Although truck masters prepare incident and accident reports involving intra-company drivers, such reports are merely submitted to management which determines independently whether any further action is warranted.

Section 2(11) of the Act defines a “supervisor” as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Moreover, the burden of proving that an individual is a supervisor rests on the party alleging the existence of supervisory status. *Bennett Industries, Inc.*, 313 NLRB 1363 (1994); *The Ohio Masonic Home, Inc.*, 295 NLRB 390 (1989). In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are “vested with genuine management prerogatives” and lead persons who are protected by the Act even though they perform “minor supervisory duties.” *Providence Hospital*, 320 NLRB 717, 725 (1996). In each case presenting a supervisory issue, the Board must “differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendations and forceful suggestions, and between the appearance of supervision and supervision in fact.” *Providence Hospital*, 320 NLRB at 725.

A careful review of the entire record reveals that the truck masters do not possess any authority to hire, fire, transfer, suspend, lay off, recall, promote or reward employees. Moreover, they do not evaluate employees or adjust their grievances. Although they prepare incident and accident reports involving the intra-company drivers, such reports are merely submitted to management officials who independently investigate and determine if any discipline is warranted. The statement in the Petitioner’s brief that the truck masters can write up intra-company drivers for safety violations which inevitably results in disciplinary action is not supported by the record. To the contrary, the record discloses that the incident or accident reports prepared by the truck masters are merely submitted to Ayen, who investigates the matter apparently with little, if any, input or involvement by the truck masters. Likewise, the assertion in the Petitioner’s brief that the truck masters exercise independent judgment affecting the intra-company drivers by determining who would go home if there is a lack of work or who would be reassigned to complete work specified by AK Steel is not supported by the record. Such decisions are dictated by factors out of the control of the truck masters and the procedures followed appear to be routine. If the truck masters encounter an unusual problem when Ayen is not at the facility, they telephone either Ayen or Bowling concerning the matter.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the truck masters are not supervisors within the meaning of Section 2(11) of the Act. Rather, they are merely leadpersons who relay management instructions and prepare reports considered by management in determining whether further action is appropriate. *Pepsi-Cola Bottling Company*, 154 NLRB 490, 493-494 (1965); *Sanborn Telephone Company, Inc.*, 140 NLRB 512, 515 (1963); *Hawaiian Telephone Company*, 186 NLRB 1 (1970); *Blue Star Ready-Mix Concrete Corporation*, 305 NLRB 429 (1991). Although the truck masters do not operate on-site vehicles, their work is directly related to that of the intra-company drivers with whom they have substantial work-related contact and share a substantial community of interest. Accordingly, I shall include the truck masters in the unit.

Dispatchers:

The Employer employs two dispatchers, Janet Riddell and Sara Alsip, who work in the main office at the Middletown terminal. The Employer would include these two employees in the unit, while the Petitioner would exclude them on the ground that they do not share a community of interest with the employees it seeks to represent. The dispatchers work exclusively in the office and punch a time clock located in that facility. The dispatchers are

responsible only for dispatching over-the-road drivers. The dispatchers do not have anything to do with the Employer's on-site work nor do they have any work-related contact with the intra-company drivers who comprise the unit found appropriate.

Based on the foregoing and the entire record, it is apparent that the dispatchers' interests are more closely aligned with those of over-the-road drivers than with the intra-company drivers who comprise the unit here. Accordingly, I find that the dispatchers do not share a community of interest with the intra-company drivers and I shall exclude them from the unit.

Stipulated Supervisors:

The parties stipulated, and the record shows, that William Bowling, president; Donald Bowling, vice-president; Joann May, secretary-treasurer; Elizabeth Brown, human resources manager; Larry Neely, safety director; Chris Amburgy, office manager; Robert Ayen, senior truck master; L. J. Martin, operations manager - Owensboro; and Richard Henry, operations manager - Detroit; have the authority to hire, discharge or discipline employees or to direct their work in a manner requiring the use of independent judgment and that they are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the unit.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All intra-company drivers, including truck masters, employed by the Employer at its Middletown, Ohio terminal, excluding all employees who work at other facilities of the Employer, all over-the-road drivers, all mechanics, all office clerical employees, all dispatchers and all professional employees, guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among 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. Section 103.20 of the Board's Rules and Regulations requires that the Employer shall post copies of the Board's official notice of election in conspicuous places at least 3 full working days prior to 12:01 a.m. on the day of the election. The term "working day" shall mean an entire 24-hour period, excluding Saturdays, Sundays and holidays. Eligible to vote are those in the unit who are employed during the payroll period and 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 retain 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 Truck Drivers, Chauffeurs and Helpers, Local Union No. 100, an affiliate of the International Brotherhood of Teamsters, AFL-CIO.

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues and the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *North Macon Healthcare Facility*, 315 NLRB 359 (1994); *Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this decision, 2 copies of an election eligibility list, containing the full names, not initials, 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 Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **March 31, 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. This request must be received by the Board in Washington by **April 7, 2000**.

Dated at Cincinnati, Ohio this 24th day of March 2000.

/s/ ***Richard L. Ahearn***

Richard L. Ahearn, Regional Director
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