

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

In the Matter of

CENTRAL PARCEL EXPRESS, INC. ^{1/}

Employer

and

Case 9-RC-17449

GENERAL TRUCK DRIVERS, CHAUFFEURS,
WAREHOUSEMEN & HELPERS LOCAL 957,
AFFILIATED WITH 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, ^{2/} 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.

^{1/} The Employer's name appears as amended at hearing.

^{2/} The Employer and the Petitioner timely filed briefs which I have carefully considered in reaching my decision.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a corporation, is engaged in providing next day parcel package delivery services from six terminals, including one located at Dayton, Ohio,^{3/} which is the only facility at issue in this proceeding. The Employer employs 29 employees at its Dayton terminal, including about 22 employees in the unit found appropriate. There is no history of collective bargaining among employees at the Dayton terminal.

The Petitioner seeks to represent a unit of 18 drivers employed at the Dayton terminal, excluding the two drivers who are dedicated to the Boise Cascade Company and make pickups and deliveries solely on behalf of that customer. The Employer maintains that the unit sought by the Petitioner is not appropriate and that the smallest appropriate unit must include all of the employees employed at the Dayton terminal. Thus, in addition to the 18 drivers sought by the Petitioner, the Employer would include the 2 Boise drivers, 2 mechanics, 6 sorters and a check-in clerk in the unit. Contrary to the Employer, the Petitioner maintains that William Isaacs, one of the sorters, is a statutory supervisor. The evidence reflects that Brett Rossback, the terminal manager, Jim Elliot and Gary Coaston are statutory supervisors and the parties entered into a stipulation to that effect. Accordingly, I find that Rossback, Elliot and Coaston are supervisors within the meaning of Section 2(11) of the Act and I shall exclude them from the unit. There are no other persons employed at the Dayton terminal. The Petitioner is willing to proceed to an election in any unit found appropriate.

For the reasons set forth below, I find that a unit of all drivers and mechanics is the smallest appropriate unit which includes the employees sought by the Petitioner.

The record discloses that around May 10, 1999, the Employer became the successor to Retail Delivery Service. The Dayton operation is limited to local^{4/} pickups and deliveries as well as related sorting functions which take place at the terminal. The Employer does not employ line haul^{5/} drivers at Dayton. However, line haul drivers employed at other terminals pick up packages from and deliver them to Dayton.

Rossback is in overall charge of the Dayton terminal. Elliot and Coaston report directly to Rossback but the record does not reflect their titles. The check-in clerk, Megan Truscott, reports directly to Rossback. Thomas French, the full-time mechanic, and Chris Stanton, the part-time mechanic, report to Rossback and Todd Garnett, the mechanic manager, who works in Cincinnati, Ohio. The mechanics make routine repairs on their own authority but major repairs require Garnett's authorization. There is no further record evidence concerning how the mechanics are supervised. William Isaacs is the lead sorter but the record does not reflect the

^{3/} The terminal is actually located in Huber Heights, Ohio, a suburb of Dayton, but the parties referred to it as the Dayton terminal.

^{4/} The Dayton operations area includes Montgomery County, Ohio, where Dayton is located, and adjacent counties.

^{5/} Line haul drivers move freight in bulk between trucking terminals. Local drivers pick up packages from the initial sender or deliver them to the ultimate recipient.

identity of his immediate superior. The sorters are the only employees who work nights and none of the stipulated supervisors are present for the bulk of the sorters' work time. Although the record is clear that Rossback has supervisory authority over the sorters, it is unclear whether he supervises them directly or through Elliot and/or Coaston. It appears that Rossback supervises the drivers indirectly through Elliot and Coaston.

The Employer does not have a human resources person at the Dayton terminal. The Cincinnati human resources department establishes the wage rates, benefits and work rules for the Dayton terminal and lends assistance regarding hiring, discharge and disciplinary matters. It appears that Rossback determines the remaining terms and conditions of employment for the Dayton employees. Full-time employees participate in the Employer's benefits programs but the part-time employees are not eligible for fringe benefits. All employees are subject to the same work rules. All hourly employees at Dayton are subject to the same five step wage progression over 4 years and the same cost of living increases, but they have different starting rates. The Boise drivers are salaried and the record does not reflect what, if any, increases they receive.

The sorters' starting time is 10 p.m. and they remain until their work is completed, usually around 7 a.m. or 8 a.m. However, they may work until after 8 a.m. in the event of a late arriving line haul, recently a more frequent occurrence. At the beginning of their shift, the sorters unload picked up packages from the Dayton drivers' trucks and sort them according to their ultimate destination, either for a local delivery the following day or for placement on an appropriate line haul. The line hauls begin arriving at the terminal at around midnight. Because William Isaacs, the lead sorter, is the only sorter possessing a fork lift license, he unloads skids from the line haul trucks and moves them into the warehouse where the skids are broken down and individual packages are placed on a conveyor belt which carries them to the dock. At the dock, sorters pick up individual packages, observe the zip code of the addressee and place the package in a stack behind the truck delivering to that zip code. After a line haul is unloaded, the sorters will reload it with packages picked up by Dayton drivers the previous day for transport to other terminals. When sorting work is slow, the sorters wash trucks and sweep the warehouse to keep busy. Isaacs is responsible for completing paperwork for the sorting operation and is generally in overall charge of the third shift sorting operations. The sorters' starting pay is \$7.75 per hour. Until September 4, 2000, the sorters were all part-time employees and did not receive any benefits. They were all converted to full-time on September 4, 2000 and as a result received holiday pay for Labor Day. Because the other benefits require a waiting period of 90 days, the sorters have not yet received them.

The CPX drivers' ^{6/} starting time is 8 a.m. and they work until they have completed their deliveries, normally between 4 p.m. and 7 p.m. Some of the CPX drivers report early so that they can load their trucks and get an early start on their routes, while others are in the habit of arriving just prior to 8 a.m. On arriving at the terminal, the CPX drivers load their trucks, according to their delivery schedule, from the stack of packages placed behind the trucks by the sorters. The loading takes about 30 to 45 minutes. The CPX drivers then depart on their routes, making deliveries and pickups along the way. When they return to the terminal, they leave picked up packages in their trucks for the sorters to unload and turn in their paperwork to

^{6/} I use the term CPX drivers to distinguish them from the Boise drivers because the parties did so on the record. CPX is an acronym for the Employer.

Truscott before ending their day. The CPX drivers are full-time, receive benefits, and their starting pay is \$8.45 per hour. They enjoy the same percentage wage increases as the other employees.

The CPX drivers on occasion voluntarily assist the sorters with the sorting functions by picking up a package belonging on their specific trucks. This normally happens upon the late arrival of a line haul at a time when the CPX drivers are motivated to expedite the loading of their trucks. A CPX driver estimated that he removes a package from the sorting belt about once every 2 weeks. Rossback estimated that recently there have been about three to four late line hauls a week but he did not estimate the frequency of CPX drivers helping to sort their own loads. The sorters do not perform driving duties or assist the CPX drivers in loading their trucks.

Boise was a dedicated customer of Retail Delivery Service, the Employer's predecessor. The Boise drivers service routes exclusively for Boise. These routes geographically overlap the routes of the CPX drivers. The Boise drivers operate trucks leased by the Employer. The lessor is responsible for servicing the leased trucks which contain Boise's logo. These drivers also wear Boise uniforms. The CPX drivers operate trucks owned by the Employer, bearing the Employer's logo and serviced by the Employer's mechanics. The skids containing Boise packages are unloaded from line haul trucks by the sorters and placed in a separate location in the warehouse. The Boise drivers are responsible for sorting and loading their own packages for delivery. The Boise drivers are salaried at \$508 per week but enjoy the same benefit package as the CPX drivers. It appears that all drivers work approximately the same hours. The Employer employs a "Boise manager" in Columbus, Ohio who has an unspecified role with respect to the Boise drivers who operate out of Dayton, but it appears that the Columbus manager's responsibilities are related to customer contact. Hiring and discharge decisions affecting Boise drivers would be made by Rossback if necessary and their work is directed from the Dayton terminal. The Employer lost its Boise business in Columbus and will terminate its Columbus Boise manager and its Columbus-based Boise drivers on October 27, 2000. The Dayton Boise drivers will not be impacted by this decision and will continue their employment. When the Employer succeeded Retail Delivery Service, the Boise drivers were salaried and the Employer continued that practice throughout its operation, including Dayton, to enhance its chances of retaining the drivers. As new Boise drivers have been hired at other terminals, they have been placed in the same hourly wage progression schedule as the CPX drivers. This has resulted in some of the Boise drivers at other terminals being salaried while others are hourly. There have been no new Boise drivers hired at Dayton since the Employer took over the operation.

The full-time mechanic, Tom French, receives the same benefit package as the other full-time employees. He generally works from 7 a.m. to 6 p.m., but his quitting time may vary according to work load. French performs all major repairs, except body work, on the Dayton vehicles owned by the Employer. His work is primarily focused on repairing trucks which have been taken out of service. The part-time mechanic, Chris Stanton, is not eligible for any fringe benefits. He works 2 or 3 days a week from 6:30 p.m. to midnight doing routine preventative maintenance and minor repairs on trucks which have not been taken out of service. According to Rossback, the mechanic's position is the only one requiring any special skills. The mechanics' starting wage rate is \$10.35 per hour. The mechanics have work related contact with the drivers when discussing repairs. The mechanics have access to an office in which they perform paperwork.

The check-in clerk, Megan Truscott, works out of a separate office. Truscott works from 1:30 p.m. until the last driver comes into the terminal for the day. As a part-time employee, she does not receive benefits. Truscott receives paperwork from the drivers concerning their deliveries upon which she performs computer data entry. She also receives improperly addressed packages that the drivers have been unsuccessful in delivering and attempts to ascertain a valid address for the package. Truscott is responsible for answering the telephone and types memoranda for Rossback. The starting rate for the check-in clerk is \$8.10 per hour. The clerk has the same wage increase schedule applicable to the sorters, drivers and mechanics.

The record discloses that a former employee went from a sorter to a driver and upon being arrested for driving under the influence was returned to a sorting position. A mechanic recently made a couple of bulk stop deliveries because the deliveries were too large to fit on the truck of the regular route driver. The record does not reflect any other permanent or temporary transfers among the sorters, drivers, mechanics or the check-in clerk.

ANALYSIS:

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining, and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, the unit sought by the petitioning labor organization 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*, 322 NLRB 723 (1996); *Purity Food Stores*, 160 NLRB 651 (1966).

The Petitioner seeks to represent a unit of CPX drivers and, contrary to the Employer, would exclude the Boise drivers, sorters, mechanics and the check-in clerk. Although the broader unit urged by the Employer may be appropriate, it does not, *ipso facto*, render a unit compatible with the one sought by the Petitioner inappropriate. *Overnite*, supra. In deciding whether a unit of drivers and dock workers, excluding mechanics was appropriate, the Board, in *Overnite*, considered whether the mechanics could constitute a separate appropriate unit. Upon finding that the mechanics could constitute a separate unit, the Board concluded that the mechanics did not share such a close community of interest with the drivers and dock workers to require their inclusion in the unit sought by the petitioner. Thus, I have considered, in determining whether the unit sought by the Petitioner is appropriate, if other possible combinations of the Boise drivers, sorters, mechanics and check-in clerk could constitute one or more separate appropriate unit(s). If they could constitute one or more separate appropriate unit(s), under *Overnite*, they may be excluded from the unit sought by the Petitioner.

The appropriateness of a given unit is governed by community of interest principles. In analyzing community of interest among employee groups, the Board considers bargaining history; functional integration; employee interchange and contact; similarity of skills, qualifications and work performed; common supervision; and similarity in wages, hours, benefits and other terms and conditions of employment. *Armco, Inc.*, 271 NLRB 350 (1984); *Atlanta Hilton & Towers*, 273 NLRB 87, 89 (1984); *J.C. Penney Co.*, 328 NLRB No. 105 (1999). Here, there is no history of collective bargaining affecting any of the employees at issue.

BOISE DRIVERS:

Initially, I find that the Boise drivers' community of interest with the CPX drivers mandates the inclusion of all drivers in the same unit. All drivers share common skills, qualifications, work functions, hours, benefits and supervision and they all perform the bulk of their work away from the terminal. Based on these factors, I conclude that the Boise drivers share such a close community of interest with the CPX drivers that they could not constitute a separate appropriate unit. Although the Boise drivers sort their own packages while the CPX drivers do not and by virtue of a temporary historical anomaly, the Boise drivers are paid on a salaried instead of hourly basis,^{7/} such factors are insufficient to overcome the otherwise strong community of interest among the drivers as a whole. Moreover, the differences in insignia on the drivers' uniforms and trucks do not have any affect on their terms and conditions of employment or the strong community of interest between all the drivers. Accordingly, I conclude that the Boise drivers must be included in the driver unit sought by the Petitioner. In reaching this decision, I noted that the Petitioner, in its brief, did not cite any precedent in support of its contention that the Boise drivers should be excluded from the unit of CPX drivers it seeks to represent.

MECHANICS:

Based on both the diversity of interest between the two mechanics and their interest with the drivers, I conclude that the mechanics cannot constitute a separate appropriate unit and must be included in the same unit as the drivers. Initially, the full-time mechanic works entirely different hours than the part-time mechanic. Thus, the mechanics are not present at the terminal at the same time and do not have any work related contact. Moreover, the full-time mechanic does skilled work associated with the major repair of trucks which have been taken out of service. The part-time mechanic merely performs routine preventative maintenance and minor repairs on trucks which have not been taken out of service. To the extent that the major repairs performed by the full-time mechanic require authorization from Garnett, the mechanic manager in Cincinnati, while the lesser skilled work performed by the part-time mechanic does not, the two mechanics are separately supervised. The work of each of these mechanics is entirely independent of the other and, therefore, is not functionally integrated. The full-time mechanic, contrary to the part-time mechanic, participates in the Employer's fringe benefit program. Under such circumstances, I conclude that the single full-time and one part-time mechanic would not constitute a separate appropriate unit.

I cannot, therefore, exclude the mechanics from the unit of drivers on the basis that the mechanic may constitute a separate appropriate unit. Although the mechanics' community of interest with the drivers might otherwise be sufficiently distinct to warrant their exclusion from a driver unit under the rationale of *Overnite*, supra, the mechanics here cannot be excluded on that basis because they do not constitute a separate appropriate unit. Thus, excluding the mechanics from the drivers unit would create a residual unit which the Board seeks to avoid. *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998); *Airco, Inc.*, 273 NLRB 348 (1984). Indeed, the Board applied this rationale in distinguishing *Overnite*, when it included a mechanic and a shop

^{7/} See, *Swift & Company*, 101 NLRB 33, 35 (1952).

employee in a drivers' unit in its unpublished decision in *Pipe Transit Ohio Division, Inc.*, Case 9-RC-17097 (July 30, 1998) (copy attached).

Having found that the mechanics cannot constitute a separate appropriate unit, I conclude that their interests lie more closely with those of the drivers than any other grouping of employees. For example, the mechanics' hours and wages more closely resemble those of the drivers than the sorters. The mechanics perform work on the trucks used by the drivers and have some work related contact with the drivers. There is no evidence that the mechanics handle packages or have any work related contact with the sorters. In addition, the record shows that a mechanic substituted for a driver on, at least, one occasion. In contrast, there is no evidence that the mechanics have ever performed sorting work. Accordingly, I find that the mechanics must be included in the unit with the drivers.^{8/} In reaching this decision, I note that the Petitioner, in its brief, has not cited any authority for excluding the mechanics from the unit.

SORTERS:

The record discloses that the sorters have different skills, job functions, wage scale and supervision than the drivers. Their work of sorting and moving packages is functionally unrelated to the primary work of the drivers, which is to drive trucks. The sorters work different hours and have very little job related contact with the drivers. There is a complete lack of any temporary interchange between the sorters and drivers and very few incidents of permanent transfers. See, *Red Lobster*, 300 NLRB 908, 911 (1990). I conclude that these significant factors, despite the similarities in benefits and work rules, establishes a community of interest among the sorters separate and apart from the drivers which would enable the sorters to be represented in a separate appropriate unit.^{9/}

In its brief, the Employer did not cite any precedent in support of its specific contention that the sorters share such a close community of interest with the drivers that they must be included in the same unit. However, the Employer generally relied on *Birdsall Inc.*, 269 NLRB 186 (1983) for its assertion that community of interest factors warrant a finding that a unit of all employees at the Dayton terminal is the only appropriate unit. In *Birdsall*, the unit found appropriate by the Board was comprised of all employees who received and handled freight within the employer's four ship loading and warehousing facilities. Neither party in *Birdsall* contended that employees involved in transporting freight to or from the four facilities should be included in the unit. The employees who comprised the unit found appropriate in *Birdsall* is, therefore, analogous to the Employer's sorters because the employees in *Birdsall* and the sorters here, were engaged in moving freight within their employers' operations as opposed to transporting it to or from those operations. Accordingly, I shall exclude the sorters from the unit.

^{8/} I note that factors indicating a commonality of interest between the mechanics and the drivers as well as their sharing of common benefits, work rules and wage progression are sufficient to establish that the drivers and mechanics *may* constitute *an* appropriate unit.

^{9/} Because William Isaacs is excluded from the unit as a sorter, I need not decide his supervisory status.

CHECK-IN CLERK:

The check-in clerk, Megan Truscott, is an office or plant clerical employee. She is the only clerical employed at the Dayton terminal and cannot constitute a separate appropriate unit of one person. *Roman Catholic Orphan Asylum*, 229 NLRB 251 (1997). Truscott's work is unrelated to and not integrated with the work of the drivers and mechanics. Her starting wage is \$.35 higher than the sorters and \$.35 lower than the drivers. Although Truscott has some work related contact with the drivers, she and the sorters perform their work at the Dayton terminal while the drivers do not. Under such circumstances, I cannot conclude that the interests of the check-in clerk are more closely aligned with the drivers than with the sorters so as to mandate her inclusion in the unit found appropriate. Indeed, it appears that most of her duties are plant clerical in nature which would clearly align her interest with the plant employees (sorters) rather than the drivers.

The Employer correctly relies on *Brown & Root, Inc.*, 314 NLRB 19, 23 (1994); *Goodman Mfg. Co.*, 58 NLRB 531, 533 (1994) and *Gordonsville Industries*, 252 NLRB 563, 591 (1980); for the proposition that workers who perform clerical duties in close association with production employees are normally included in production and maintenance units as plant clerical employees. Consistent with this precedent, I have concluded that the check-in clerk here cannot constitute a separate appropriate unit and has a community of interest aligned with the plant employees (sorters) who work in the Employer's warehouse akin to that of a plant clerical employee. Accordingly, I shall exclude the check-in clerk from the unit.

Based on the foregoing, the record as a whole and careful consideration of 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 drivers and mechanics employed by the Employer at its 7980 Center Point 70 Blvd., Huber Heights, Ohio facility, but excluding all sorters, the check-in clerk and all office clerical employees 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 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 **General Truck Drivers, Chauffeurs, Warehousemen & and Helpers Local 957, affiliated with 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 in 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); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). 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 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 **October 6, 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 **October 13, 2000**.

Dated at Cincinnati, Ohio this 29th day of September 2000.

/s/ Richard L. Ahearn /s/

Richard L. Ahearn, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Attachment

440-1760-2460
440-1760-6200
440-1760-6280
440-1760-6760
440-1760-9167-5000