

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

DEAN FOODS COMPANY OF INDIANA, INC.¹

and

Case 25-RC-10005

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held December 18, 2000, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

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

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

1. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. 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 Employer's name appears as corrected at hearing.

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

All full-time and regular part-time transportation employees (also referred to as truck drivers) employed by the Employer at its Rochester, Indiana facility; BUT EXCLUDING all managerial employees, office clerical employees, salesmen, guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 36 employees for whom no history of collective bargaining exists.

I. STATEMENT OF FACTS

The Employer, Dean Foods Company of Indiana, Inc., is engaged in the processing and distribution of milk and other dairy products. Its corporate headquarters is located in Rosemont, Illinois. Its Indiana facilities include a milk processing plant and distribution center located in Rochester, Indiana, as well as distribution depots in Elwood and Indianapolis, Indiana. The Employer's primary customers are supermarkets and convenience stores. The approximately 130 production and maintenance employees who work in the processing plant are represented for purposes of collective bargaining by the Steelworkers Union, and the approximately 14 truck drivers who work at the Indianapolis depot are represented by the Teamsters Union. There is no history of collective bargaining for the remainder of persons employed in Indiana, including the truck drivers employed at the Rochester and Elwood facilities who are the subject of the present proceeding.

The Petitioner seeks an election within a unit comprised of the approximately 36 truck drivers who are domiciled at the Rochester facility. The Employer maintains, however, that only a unit comprised of both drivers domiciled at its Rochester and Elwood facilities is an appropriate unit for collective bargaining. In addition, the Employer urges that the Rochester facility include 5 truck drivers who were transferred there following the closure of their depot formerly located in Lafayette, Indiana. The Petitioner, however, asserts that the Lafayette drivers should not be included in any unit found appropriate herein, on grounds that the semblance of a depot remains in Lafayette, and the Lafayette drivers do not share a sufficient community of interest with Rochester drivers to warrant their inclusion within the same unit.

Unlike the Rochester facility, the Elwood depot does not have a production facility. The Elwood facility consists of an office trailer located on a rented parking lot. One driver from Elwood goes to the Rochester production plant twice each day, where his trailer is loaded with product which he returns to the Elwood depot. There the product is offloaded onto the straight trucks driven by the other 9 Elwood drivers. The Elwood facility is staffed by these 10 drivers, plus a dispatcher and clerical employee.² The Elwood depot services customers located in east-central Indiana and it is located approximately 80 miles from the Rochester facility. The transportation of product from Rochester to Elwood is apparently not assigned on a permanent basis to any one Elwood driver. Any one of five drivers at the depot who hold a Class A commercial driver's license drive the transport truck. It takes about an hour to load the truck

² The parties stipulated that the Elwood dispatcher and the two dispatchers who work at the Rochester facility are statutory supervisors, and the record supports this stipulation.

with product at Rochester. According to the sole driver who testified at hearing, and who is employed at Rochester, he sees an Elwood driver for about 2 minutes each week.

The Rochester facility is staffed by 36 drivers, 2 dispatchers, and several clericals. The office of the Distribution Manager for the State of Indiana is also located at the Rochester facility. The Distribution Manager is responsible for the distribution of product throughout the State, and he indirectly supervises all of the Respondent's truck drivers. The drivers domiciled at the Rochester facility service customers in Illinois, Ohio and Indiana.

The Indianapolis depot, which is located 100 miles from Rochester, is staffed by 14 drivers, 1 dispatcher, and a clerical employee. The record does not reflect the geographic area serviced by these drivers.

The drivers who work at Rochester and Elwood are assigned routes comprised of customer accounts, on an indefinite or "permanent" basis. The routes are developed by the dispatchers at each location who arrange customers into routes. At the beginning of each year, drivers can bid on the routes and routes are assigned by the dispatchers, based upon driver seniority. Separate seniority lists are maintained for each facility. Changes in work schedules and routes are made by the dispatchers when necessary to accommodate customer needs. When vacancies arise in driver positions at the Rochester and Elwood facilities, the dispatchers at each location interview job applicants for the vacancies, and make hiring recommendations to the Distribution Manager who makes the ultimate hiring decisions. The dispatchers approve/disapprove driver requests for sick and personal leave. The dispatchers also possess the authority to issue minor discipline to drivers without prior consultation with or approval of the Distribution Manager, while major work rule infractions are reported by the dispatchers to the Manager who decides whether and what discipline is appropriate.

The Employer sponsors a summer picnic and winter Christmas party to which all employees are invited, but the record does not indicate whether any Rochester or Elwood drivers attended the most recently held party.³ Quarterly safety meetings to which the drivers from both facilities are invited, are also conducted by the Employer on Sunday mornings. Attendance is voluntary and according to a Rochester driver who attended each meeting during the past year, no Elwood driver attended any of the meetings. In addition, drivers who work at Rochester participate in their own safety committee comprised of representatives of management and drivers. The committee discusses and presumably seeks to correct safety problems they have encountered at the Rochester facility.

According to the testimony of the Distribution Manager, during his six-year tenure with the Employer one driver transferred on a permanent basis between Elwood and Rochester. One driver has transferred temporarily in the past two years.

In addition to the processing plant, the Rochester facility contains an administrative office which provides centralized support services for all of the Employer's Indiana facilities. All drivers are required by federal law to possess commercial driver licenses and are subject to the jurisdiction of the United States Department of Transportation. The Rochester facility oversees DOT compliance and administers on a state-wide basis, the paperwork which its drivers complete pursuant to DOT regulations. The administrative office also includes a Customer Service Department consisting of five employees. Five additional employees perform billing functions for Indiana customers, although the accounting department located at the corporate office in Illinois performs all other accounting functions. Similarly, work rules governing all

³ No Christmas party was held in 1999, however.

non-unionized employees are established by the corporate headquarters. Two sales offices handle Indiana sales: one office, consisting of seven employees, is located in the Rochester facility, while the other office, comprised of 10 employees, is located in Carmel, Indiana.

With the exception of the Indianapolis drivers whose wages and benefits are determined through collective bargaining, Rochester and Elwood drivers receive the same wages and fringe benefits, which are administered by a Human Resource Department located at the Rochester facility. Included among the benefits received by drivers are medical insurance, a pension program, and employer-provided uniforms and safety shoes.⁴

In November of 2000, the Employer closed a depot located in Lafayette, Indiana and the building which housed the depot is presently for sale. According to the testimony of the Distribution Manager, the five routes which were serviced by the Lafayette depot were consolidated into four routes and transferred to Rochester. Similarly, the five truck drivers formerly domiciled in Lafayette were transferred to Rochester. The dispatcher and clerical employee who also staffed the Lafayette depot no longer work for the Employer, and the former Lafayette drivers are now supervised by the Rochester dispatchers. Since the elimination of the Lafayette depot, the Employer uses no office trailer or other structure in Lafayette. When the former Lafayette drivers' trucks are not in usage, the trucks are parked on a parking lot apparently owned by an unrelated business. The refrigeration units of the trucks are plugged into electrical outlets in the parking lot, and the Employer pays for the electricity it uses. Every day each former Lafayette driver travels the approximately 65 miles to the Rochester facility where his truck is loaded with product. The drivers then return to the Lafayette area where they distribute the product to customers. Thus, the former Lafayette drivers continue to service Lafayette area customers, but they do so from the Rochester facility.

II. DISCUSSION

The Employer contends that any unit found appropriate herein should include the five drivers formerly domiciled at Lafayette and currently assigned to the Rochester facility. The Petitioner contends, however, that the Lafayette drivers should be treated as if they still worked out of a Lafayette depot, and it argues that they do not share a sufficient community of interest with Rochester drivers to warrant their inclusion in the same unit. A critical difference between the drivers' conditions of employment before versus after the elimination of the Lafayette depot, is that the Lafayette drivers no longer have separate supervision, but are now supervised by the Rochester dispatchers. They also have contact with Rochester employees when they spend an hour each day at the Rochester plant while their trucks are being loaded with product. The drivers have been transferred administratively to the Rochester facility by the Employer. Thus, the evidence indicates that the former Lafayette drivers are now a part of the Rochester workforce, and therefore, they shall be included within the unit found appropriate herein.

A single-facility unit is presumptively appropriate for purposes of collective bargaining unless a functional integration between two or more facilities exists sufficiently substantial to negate the separate identity of a single-unit facility, Globe Furniture Rentals, Inc., 298 NLRB 288 (1990). The rationale for this presumption is that a narrowing of the size of a unit maximizes the importance of each employee's vote. The party seeking to overcome the presumptive appropriateness of a single-facility unit must show that the day-to-day interests of the employees of one facility have merged with those of another facility, Beckett Aviation

⁴ Drivers earn \$14.72 per hour. The uniforms worn by Rochester drivers include white shirts and dark slacks, while the Elwood drivers are provided blue shirts.

Corporation, 254 NLRB 88, 89 (1981). Factors commonly relied upon by the Board in determining whether a single or multi-facility unit is appropriate, include the centralized administration and control of labor relations, the skills and work functions of the employees, the commonality of daily supervision, the similarity of employees' terms and conditions of employment, the extent of operational and employee interchange, and the geographical proximity of the facilities. In the case at hand, while there exists substantial centralized administration and a similarity in the skills, work functions, and terms and conditions of employment among the truck drivers at the Rochester and Elwood facilities, other factors such as the localized supervision of the drivers; the relative autonomy of that supervision; the absence of meaningful contact and interchange between the drivers of each facility; and the geographic distance between the facilities fail to negate the separate identity shared by drivers domiciled at Rochester.

The Employer contends that the extensive centralized administration which exists within the Employer's Indiana operations fosters the creation of a community of interest among employees at both facilities. The probative value of this centralization in affecting a community of interest between drivers is diminished, however, by the fact that many of the same support services such as human resources, payroll processing, DOT compliance, sales, customer service and billing, are also provided to the employees of the Indianapolis facility whose inclusion within the petitioned unit the Employer does not seek. The separate day-to-day supervision and the relative autonomy of that supervision, also militate in favor of separate units. The Board has recognized that certain factors such as common daily supervision have a greater impact upon creating a community of interest among employees than other factors such as common indirect supervision, as is the case here. Common daily supervision has a greater impact upon the creation of a community of interest than do other factors because it has a direct impact upon employees' work lives, and employees with different supervisors may not necessarily share similar problems or concerns, D&L Transportation, Inc., 324 NLRB 160, 161 (1997); Towne Ford Sales, 270 NLRB 311 (1984). In the present case, the dispatchers at each facility enjoy autonomy in the recommendation of applicants for hire as drivers, the development of driver routes and work schedules, the approval of leave requests, and the issuance of minor discipline. In other cases the Board has found that comparable supervisory autonomy contributed to a local, rather than multi-site community of interest among employees, D&L Transportation, Inc., *Ibid.* The insignificant amount of employee interchange and contact also supports a single-facility unit. Only one permanent transfer has occurred in the past six years, and one temporary transfer in the past two years. Although drivers from one location are periodically asked to deliver product to a customer normally serviced by drivers from the other facility, absent evidence that this joint servicing of customers involves any contact between the drivers from each facility, it cannot be concluded that it contributes to a community of interest between them. Lastly, the geographic distance between facilities also disfavors a multi-site unit; this is illustrated by the fact that no Elwood driver has attended a Sunday morning safety meeting conducted at the Rochester facility during the past year.

R & D Trucking, Inc., 327 NLRB No. 103 (1999), cited by the Employer, is inapposite since in that case the employees who worked at the second location were not separately supervised; there was a history of regular and substantial interchange between the employees who worked at the two sites in issue; and the two sites were only 5 miles apart. Based upon these and other factors, the Board concluded that the employer had rebutted the single-facility presumption and that the smallest appropriate unit must include the employer's drivers stationed at both sites.

In the case at hand, however, the totality of record evidence fails to establish that the drivers at the Rochester facility have become so effectively merged with those of Elwood that they have lost their separate identity, J & L Plate, Inc., 310 NLRB 429 (1993) and Ohio Valley Supermarkets, Inc., 323 NLRB No. 125 (May 7, 1997). Accordingly, it is concluded that the

drivers of the Employer domiciled at its Rochester, Indiana facility, including those five drivers recently transferred from its former Lafayette depot, constitute a unit appropriate for purposes of collective bargaining.

III. 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 in the unit who are 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 unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit 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 United Steelworkers of America, AFL-CIO-CLC.

IV. LIST OF VOTERS

To insure 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 which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **January 11, 2001**. 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. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

V. 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, DC 20570. This request must be received by the Board in Washington by January 18, 2001.

DATED AT Indianapolis, Indiana, this 4th day of January, 2001.

/s/ Roger A. LaForge
Roger A. LaForge
Acting Regional Director
National Labor Relations Board
Region 25
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, IN 46204-1577

RLF/ar

R25com\decision\D2510005.doc

420-6260
460-1720-0133
460-3301-3375-5050