

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 32

(Livermore, CA)

OWENS & MINOR WEST, INC.

Employer

and

Case 32-RC-4939

TEAMSTERS, LOCAL 853, IBT, 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 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, including the Employer's brief and the Union's argument made at the hearing, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find that the Employer, a California Corporation engaged in the business of distributing medical instruments and products, and surgical instruments and supplies, is engaged in commerce within the meaning of the Act and it will effectuate purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find that the Union involved is a labor organization within the meaning of Section 2(5) of the Act.

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. Petitioner seeks to represent a unit limited to all full and regular part time warehouse employees working out of the Employer's facility in Livermore, California. The Employer contends that the only appropriate unit must also include drivers, customer service employees, purchasing employees at Livermore, and all employees at the Employer's Lathrop, California facility. The Petitioner has not taken a position regarding whether lead employees should be included in the unit, however, the Employer contends that lead employees should be included. The parties stipulated that all office clerical employees, including receptionist and billing clerk positions, should be excluded. The parties further stipulated that the following individuals are supervisors within the meaning of Section 2(11) of the Act and they shall be excluded from the unit found appropriate herein:

Dave Molina	–	Warehouse Manager (Livermore)
Brian Bradbury	–	Supervisor Drivers (Livermore & Lathrop) & Inventory Control (Livermore)
Steve Day	–	Supervisor Shipping & Receiving (Livermore)
Doug Walker	–	Supervisor Inventory Control (Livermore)
Phil Deckard	–	Supervisor Receiving (Livermore)
Dan Medley	–	Supervisor Shipping (Livermore)
Emmett Padilla	–	Supervisor Night (Livermore)
Sam Johnson	–	Supervisor Night (Livermore)
Bill Souza	–	Supervisor Night (Livermore)
Darrell Sanchez	–	Warehouse Manager (Lathrop)
Michael Cheadle	–	Supervisor Day (Lathrop)
Mark Davis	–	Supervisor Night (Lathrop)
Robert Vargas	–	Supervisor Night (Lathrop)
Carol Spinelli	–	Purchasing Manager (Livermore & Lathrop)

Gerald Trujillo	–	Customer Service Manager (Livermore & Lathrop)
Chris Webster	–	Customer Service Supervisor (Livermore & Lathrop)
Jason Gomez	–	Accounts Receivable Manager (Livermore & Lathrop)
Joe Hince	–	General Manager (Livermore & Lathrop)

The Employer distributes medical and surgical instruments and products to customers in Northern California and Reno, Nevada. The Employer maintains two distribution facilities, one in Livermore, California the other in Lathrop, California, that make up its San Francisco Distribution Center. The Livermore distribution facility is approximately 150,000 square feet and consists of a large warehouse area and attached office space. The Lathrop facility opened on November 5, 2001, approximately three weeks prior to the hearing herein, and is located approximately 25 miles from the Livermore facility. The Lathrop facility has approximately 75,000 square feet of warehouse space with some offices located inside the warehouse.

The Livermore facility employs 85 warehouse employees (33 on day shift and 52 on night shift), 17 drivers, 14 customer service employees and 9 purchasing employees. The Lathrop facility employs 36 warehouse employees and 9 drivers. The Lathrop facility does not employ customer service or purchasing employees. The Livermore facility operates on a 24 hour a day basis, seven days a week. The Lathrop facility is open on a twenty four hour basis, six days a week and is closed on Saturdays.

Joe Hince is the General Manager of both facilities. Hince reports to Area Director of Operations, Peggy Samuels, who is also responsible for San Diego, Los Angeles and Phoenix operations. The Employer's home office is located in Richmond, Virginia. Both Hince and Samuels have offices at the Livermore facility. Several department managers report to Hince, including the Customer Service Manager Joe Trujillo, Purchasing Manager Carol Spinelli, Accounts Receivable Manager Jason Gomez, and Lathrop Warehouse Manager Darrell Sanchez.

Warehouse employees work staggered eight hour shifts starting at 6:00 a.m. and 6:00 p.m. with the last shift concluding sometime between 1:00 a.m. and 4:00 a.m. The warehouse department includes several different types of employees, including material handlers or order pickers, shipping employees, receiving employees, and inventory control employees. Dave Molina is the Warehouse Manager. Dan Medley is the immediate supervisor of the shipping day shift. Phil Deckard is the immediate supervisor of the receiving employees. Both Deckard and Medley report to Stephen Day, the day supervisor of shipping and receiving. Emmett Padilla, Bill Souza and Sam Johnson are night shift supervisors. Day and the night supervisors report directly to Warehouse Manager Molina, who in turn reports to General Manager Hince.

Supervisor Dan Medley assigns customer orders to warehouse employees to be picked from inventory. Warehouse employees access the orders using hand held computer terminals that connect to the Employer's computer, identified as CSW. Warehouse employees pull the ordered products from inventory, print labels, label products, and assemble the orders for shipping. Once a customer order is assembled, the warehouse employees print a packing slip, which is attached to the product for delivery to the customer, and deliver the materials to the route door, to be loaded on the delivery trucks.

Warehouse employees use pallet jacks, forklifts, reach trucks, hand held computer terminals, and personal computer printers to perform their work. When using forklifts they are required to wear a safety harnesses. Warehouse employees have weekly department meetings. No employees from other departments attend these meetings.

Warehouse employees are not able to change the orders and any problems they encounter in picking the order are reported to their lead or supervisor. No warehouse employees do

customer service work or have direct contact with customers. No warehouse employees ever fill in for drivers, customer service or purchasing employees.

There are approximately five to seven inventory control employees who work in the warehouse doing routine inventory counts to insure that the CSW lists the correct amount of available inventory in the correct locations. Inventory control employees spend approximately one day a week performing those duties. Their other duties include replenishing lower level bins with inventory, and placing and relocating inventory throughout the facility. Doug Walker is the immediate supervisor of the inventory control employees. He reports to Brian Bradbury, the day supervisor of drivers and inventory control. Bradbury reports directly to Molina.

Once or twice a year, the Employer has a weekend long inventory during which customer service, warehouse and purchasing employees count inventory using hand held computer terminals. The Employer also does an annual bin verification that consists of verifying the location of product in the warehouse. This task takes two weekends and is performed by warehouse employees and some purchasing employees. In the most recent bin verification three purchasing employees participated in the bin verification by verifying some floor level locations with the hand held computers and looking up product numbers on the warehouse computers.

Customer service employees at the Livermore facility process customer orders as well as handle customer concerns and complaints for both facilities. They receive orders by phone and fax, and work with the customers to fill the orders with product in stock, making product or vendor substitutions that are acceptable to the customer, if necessary. They also arrange for express shipping and special delivery. They work staggered shifts starting at 6:00 a.m., 7:00 a.m., 8:00 a.m., 8:30 a.m., 9:00 a.m., and 11:00 a.m. They sit as a group in four person cubicles on the second floor of the Livermore office area, which is attached to, but separate from the warehouse

area. Each customer service employee has a desk and a computer terminal and spends about 1 to 5 hours per day working on the computer and 1 to 5 hours per day on the telephone speaking to customers. Customer service employees, utilize two computer systems, the Employer's computer system, identified as CSW, and an Omni database system to fill the orders with available inventory. Customer service employees input customer order information, as well as customer preferences and customer usage forecasts into the CSW. Once finalized, customer orders are released to the warehouse department, generally at two different cut-off times during the day. A customer service employee will notify the warehouse by calling the department.

Customer service employees never pull inventory to fill customer orders. Customer service employees have delivered special orders to customers using their own cars; however, there was no specific evidence regarding how often this occurs. Nevertheless, even in those instances customer service employees do not pull the order from inventory.

There are certain instances where a the customer service department and warehouse department need to communicate with each other. For example, the warehouse may need to contact customer service to fix problems with customer orders and labels. The customer service department will then contact the customer and make adjustments in the computer accordingly. The customer service department contacts the warehouse department for several reasons, including to release orders, to request inventory checks, to facilitate rush orders and special delivery, and to determine whether rush deliveries are available to release for customer orders. The Customer service may handle these issues by monitoring the computer system or contacting the warehouse directly. Communications between warehouse employees and customer service departments are generally handled by phone and go through the supervisor or lead employees. These communications may also be handled by the "shipping coordinator," which was filled by a non-lead employee, but the

record indicates that these duties are now being handled by supervisor Dan Medley. While these communications are generally handled by phone, in instances when a customer service employee cannot reach one of those persons by phone they may go to the warehouse to speak with a warehouse employee in person. This occurs approximately once per day, however the record does not disclose whether this would be to talk directly to a supervisor or lead employee or a general warehouse employee. During the normal course of business customer service employees do not go into the warehouse inventory storage areas, the shelves, and should check with a warehouse supervisor before doing so.

There are 15 to 17 driver routes run from Livermore and 7 to 9 run from Lathrop per day. All but one driver starts work between 3:00 and 4:00 a.m. Brian Bradbury is the immediate supervisor for drivers at both facilities. Drivers spend approximately one to one and a half hours per day loading their truck. Once loaded, drivers spend the majority of their day away from the facility delivering customer orders and unloading the products at the customer's facility. Drivers also pick up customer returns, return them to the facility and unload them to the returned goods area. In order to authorize a return, customers must obtain a return order by contacting customer service. The driver attaches the return order to the items being returned, and once placed in the returned goods area, warehouse employees return the product to inventory.

In addition to driving trucks and tractor trailers, drivers use pallet jacks, hand trucks and reach trucks to perform their work. Drivers are required to have a Class A license, must maintain Department of Transportation (DOT) logs and are subject to random drug testing. Drivers coordinate repairs for their own trucks and are not required to obtain approval prior to obtaining repairs. Drivers attend department meetings every other week.

Drivers generally load the product into their trucks for delivery. However, due to time constraints, warehouse employees load the two longest routes between 1:30 a.m. and 4:00 a.m. everyday. Warehouse employees also load 4 to 5 trucks on Friday nights for Saturday delivery and one truck on Saturday night for Sunday delivery. In addition, warehouse employees may remove tote, plastic bins, or carts, left on trucks. Trucks loaded by warehouse employees are not loaded by drivers. Warehouse employees spend approximately one half hour of their day loading trucks, if any.

Approximately five to seven of the twenty six drivers were formerly warehouse employees. No employees from other positions fill in for drivers when they are out sick or on vacation. Drivers do not participate in inventory or bin verification and do not use hand held computer terminals. At the hearing, there was some general testimony that drivers may be assigned warehouse work such as clean up, moving pallets, bringing totes and customer returns. However, there is little to no specific evidence on the record regarding when or how often this occurs. An injured driver that formerly worked in the warehouse is currently assigned to work in the warehouse on light duty. The only other specific evidence of drivers performing regular warehouse duties involved several drivers who used to perform some warehouse duties after working certain short routes or routes with days off; however, the record discloses that those routes no longer exist.

Drivers may occasionally communicate directly with warehouse employees regarding which pallet size to use or how to stack them when loading a truck. However, the evidence indicates that this is very rare and would only occur on occasions when a warehouse employee works overtime into the period when drivers begin their shifts.

Customer service employees may page drivers if they receive a customer complaint about a misdelivery or a missing packaging slip in an attempt to locate the missing items. The record does not disclose how often such calls are made. If the driver does not have the packaging slip, the customer service employee will go to the warehouse to print a second copy to fax to the customer. Again, the record does not disclose how often this occurs.

Purchasing employees are responsible for maintaining sufficient inventory. They purchase materials and enter that information into the CSW. Warehouse employees receive the products in the warehouse and check the product received against the purchase order. Warehouse employees unpack the product and put them away into inventory. If there is a problem receiving an item, a warehouse employee will advise the warehouse lead or supervisor of the problem. In the event that a warehouse person cannot find their lead, they may approach purchasing directly to have the problem fixed in the computer. One purchaser, Art Crossini, started in the warehouse. Purchasing employees may communicate with drivers to advise them merchandise needs to be picked up directly from a manufacturer. There is no evidence in the record regarding how often this occurs. There is general testimony regarding an occasion when a purchaser helped in the warehouse doing some receiving work. Again, there is no evidence regarding when this occurred or for how long.

The purchasing department may have contact with the warehouse department when there has been a change in the product purchased which necessitates changing either the product information in the computer or assigning the new product a revised product code. This occurs approximately twice a month. When the warehouse receives a misdelivery of product to the facility, a warehouse employee will fill out a delivery complaint and can alert purchasing and/or customer service. Such instances are estimated to occur everyday and communication regarding these issues is generally handled by phone. There is no evidence in the record regarding whether

such contact is between supervisors or leads of departments or between non-lead employees. In some instances, the warehouse may take the misdelivery to the purchasing department or may call a purchaser down to the warehouse.

There is one Human Resources Manager for both the Livermore and Lathrop facilities. She works out of the Livermore facility and is supervised by General Manager Hince. She is responsible for handling new hires, orientations, benefits, payroll, and correspondence with the Employer's home office HR department in Richmond, Virginia. She collects information from the time clocks at both facilities and transmits payroll information to the home office in Virginia where the paychecks are generated. The paychecks for both facilities are sent to Livermore and the Lathrop employees' paychecks are sent with the daily shuttle to the Lathrop facility for distribution.

All of the Livermore and Lathrop employees are paid hourly and are eligible for overtime. The Employer utilizes a pay scale system set by the Employer's home office in Virginia. The pay scales appear to overlap to some degree however the record does not disclose the specific wages earned by employees. Drivers are paid at Grade 7, which is very generally estimated at between approximately \$12 to \$13 and \$20 to \$21 per hour. Purchasing and Customer Service employee are paid at Grade 6, which is approximately \$12 per hour and higher. Warehouse employees are paid at Grade 4, which is approximately \$11 per hour and higher.

The Employer provides a quarterly productivity bonus to all employees that is determined by the productivity of both facilities. The Employer uses the order fill ratio (the number of items per order filled by available inventory) to determine the productivity bonus. All employees receive the same amount of quarterly bonus. Employee evaluations are performed by an employee's supervisor and reviewed by a manager. Those evaluations form the basis for employees' individual

merit pay increase. Pay recommendations are made by managers and routinely approved by Hince. Night shift employees receive additional pay.

All employees receive the same benefits including medical and dental insurance, 401K plan and a stock purchase plan. All employees are covered under the same employee handbook and are covered under the same sick leave policy. All employees receive the same holidays; however vacation schedules are done separately by both department and shift. Vacation is assigned by department managers or supervisors and are approved on a first come first served basis, ties are determined by seniority. Seniority is determined by hire date, regardless of the facility at which an employee works. Warehouse equipment is distributed for use according to employee seniority; however such distributions are made by facility.

All employee personnel files are kept at the Livermore facility. Job openings at either facility are posted at both facilities. Employees are allowed to bid for any job opening, including those in other departments. Hince approves all hiring decisions and has participated in some but not all interviews. Darrell Sanchez, the Lathrop warehouse manager, hired one part time employee with the General Manager's permission. Any employee training to date has taken place at the Livermore facility.

Supervisors and managers can issue oral and written warnings within their own discretion. Hince reviews only serious disciplinary actions such as final written warnings. Employee grievances are handled by an employee's supervisor or manager and may be reviewed by Hince if necessary. While employee grievances are generally handled by supervisors and managers, the Employer maintains an open door policy and employees are free to go the General Manager with complaints or problems.

Purchasing and customer service employees are required to wear business casual attire, drivers wear a uniform shirt provided by the Employer, and warehouse employees have no restrictions regarding what they can wear. Livermore employees share a common parking lot, punch the same time clock, and drivers and warehouse employees share a common area for mailboxes and lockers. In Lathrop, there is a common lunchroom, time clock and parking lot.

There is one budget for both facilities and office supplies for both facilities are ordered at Livermore. The inventory at both facilities is tracked by the CSW computer system. However, all facilities utilize the CSW system and while access to other divisions' data is limited, the Livermore and Lathrop facilities are able to access inventory for other facilities including San Diego and the City of Industry.

The Lathrop facility is located approximately 30 to 40 minutes traveling time from Livermore facility. As noted, *supra*, the Lathrop facility employs approximately 45 employees (36 warehouse employees and 9 drivers) all of whom transferred voluntarily from the Livermore facility when Lathrop was opened. One part-time employee was hired after Lathrop opened by the Lathrop warehouse manager, Darrell Sanchez, with Hince's approval. Employees at either facility are eligible to apply for open positions at the other facility. However, employees are not allowed to permanently transfer from one to the other unless there is an opening. There is one day shift supervisor, Michael Cheadle, and two night shift supervisors, Mark Davis and Robert Vargas at Lathrop. Brian Bradbury is the immediate supervisor for drivers at both facilities, however he works in the Livermore facility and at the time of the hearing had been to the Lathrop facility only three times since the facility had opened.

The Employer presented general testimony that warehouse and driver employees from one facility "occasionally" work at the other facility following their regular shift. The two warehouse

managers assign employees to work at another facility depending on the workload. However, the record is devoid of specific information regarding these assignments, such as the names and dates of persons assigned to work at separate facilities. The record failed to provide even more general information concerning how often those assignments occur, how many employees have been assigned to work at the other facility, for how long, how the employees were selected and whether the assignments were voluntary. The Employer provided general testimony that it intends to reunite the two facilities under one roof sometime in the future and indicated it would probably be within two years since both facilities' leases are due to expire in two years. However, the testimony concerning the plans to reunite the facilities was entirely speculative and not supported by any specific details.

Both facilities maintain similar inventory; however, there is one daily shuttle scheduled to transfer inventory between the facilities, and there can be up to two or three shuttles per day between facilities. The load is driven by the "first driver to return to the facility from their route" and is loaded by "whoever is available," including warehouse employees or drivers. The record does not indicate how much inventory is transferred between the facilities, how often warehouse employees load the truck, how often drivers load the truck, whether they load the truck together, or how the information regarding what needs to be transferred is communicated to employees.

The warehouse and driver departments have lead employees. Leads generally spend 6 to 7 hours of their day engaged in the same physical work as other employees in the department. The remainder of the time is spent completing paperwork and other administrative tasks. Leads do not hire or fire employees. There is no evidence that leads perform any discipline beyond routine notation of employee rule breaking, such as being late or failing to wear a safety harness. The Petitioner has not taken a position that the leads should be excluded from the unit and there is

insufficient evidence to conclude that the leads are supervisors under the Act. Therefore, the leads will be included in the unit found appropriate herein.

At the time of the hearing, the Employer employed two buyers, one assistant to the Vice President and one driver through third party temporary employment agencies. The Petitioner is not seeking to represent the temporary employees and the Employer has taken no position regarding whether they should be included in the unit. Nevertheless, the evidence demonstrates that these temporary employees have no expectation of long term employment. Accordingly, any employees employed by the Employer through third party temporary employment agencies shall be excluded from the unit found appropriate herein.

In deciding the appropriateness of a bargaining unit, the Board first considers the union's petition and whether the requested unit is appropriate. *Overnite Transportation Company*, 322 NLRB 723 (1996). The Board, however, does not compel a petitioner to seek any particular appropriate unit. *Id.* In fact, the petitioned-for unit need only be an appropriate unit for purposes of collective bargaining, not the most appropriate unit, and in representation proceedings, the unit sought by the petitioner is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994). A union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer. *Overnight, supra* at 723.

It is settled Board law that a single-facility is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has no separate identity. See *Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood*, 323 NLRB 665, 666 (1997). It is also settled case law that the burden is on the party opposing the appropriateness of a petitioned-for single-facility unit to present sufficient evidence to overcome that presumption. *Id.* To determine whether the presumption has been rebutted, the Board looks at

factors such as centralized control over daily operations and labor relations, including the extent of local autonomy to handle the facilities' daily operations and supervision of the employees' daily work, extent of employee interchange, similarity of skills, functions, and working conditions, geographic proximity, and bargaining history, if any. *See D & L Transportation*, 324 NLRB 160 (1997); *Rental Uniform Service*, 330 NLRB No. 44 (1999). The evidence presented by the Employer in the instant case is not sufficient to rebut the presumption in favor of a single-facility unit.

Although in the instant case there is some central administrative control over operations and labor relations; this would be expected by virtue of the functional organization of the Employer. Corporate decision-making involving operations and personnel matters does not, in and of itself, preclude finding a single location unit to be appropriate. *See, e.g., Emporium Capwell*, 273 NLRB 621 (1984); *United Parcel Service*, 258 NLRB 223 (1981). The same analysis applies with regard to set pay scales, similar benefits, integrated manufacturing operations and similar job classifications and qualifications. Such factors alone are not sufficient to overcome the single facility presumption. *J&L Plate, Inc.*, 310 NLRB 429 (1993).

However, the record evidence does not establish that the Employer maintains centralized control over the daily operations and supervision of the employees' daily work. There is no evidence of shared supervision on day-to-day matters between the Lathrop warehouse manager and the Livermore warehouse manager. In fact, except for the approximately 5 to 7 inventory control employees at Livermore, there is no overlap in any of the Employer's departmental supervision and management other than the General Manager, Joe Hince. The Livermore customer service, Livermore purchasing and Lathrop warehouse departments have completely separate lines of supervisors and managers. Excluding the inventory control employees, the

Livermore warehouse employees also have completely separate supervisors and managers. While Brian Bradbury is responsible for supervising both the Livermore inventory control employees and drivers at both facilities, his inventory control employees are under the separate immediate supervision of Doug Walker, the Livermore inventory control supervisor. While the drivers at both facilities are under Bradbury's "immediate" supervision, the evidence demonstrates that he had been to the Lathrop facility only three times in three weeks, with no evidence as to how long, and he is not present at the Livermore facility until well after Livermore drivers have loaded their trucks and departed the facility on their routes. In fact, there is no supervisor present at the Livermore facility at the time the drivers arrive to work and load their trucks. Such evidence is hardly sufficient to establish centralized supervision of employees' work and the facilities' daily operations.

In addition, discipline determinations are made by the separate department supervisors and managers and are reviewed by the General Manager only in the most serious cases. From the limited evidence presented regarding hiring procedures, it appears that department managers make hiring decisions with the approval of the General Manager. Other than the fact that department managers and supervisors approve vacation schedules, there is little to no evidence in the record as to who has authority regarding scheduling, hours of work, granting of time off, and approval of overtime.

Although the record establishes that employees' skills, job duties and general working conditions are similar, there is insufficient evidence on the critical factor of employee interchange to rebut the single-facility presumption. While there were a significant number of voluntary permanent transfers when the Lathrop facility opened, such transfers sought by employees for their own convenience are not given great weight in determining the degree of

employee interchange. *Renzetti's Market, Inc.* 238 NLRB 174, 175 fn. 8 (1978). In this regard, I also note that the Board has concluded that permanent transfers are a "less significant indication of actual interchange" than temporary movement, and that such transfers are entitled to less weight. *Foodland of Ravenswood, supra*, at 667. In the instant case, there is no specific evidence regarding temporary transfers between facilities. The Employer's testimony regarding temporary transfers, which referred generally to some occasions of temporary overtime work, was unsupported by documentary evidence, details or specifics as to names, dates and numbers of employees. Moreover, regardless of the Employer's transportation of inventory and documents between the facilities, each of the facilities maintains its own inventory and runs its own regular delivery routes.

In *Rental Uniform Service, supra*, the Board faced a similar factual situation and found the employer failed to overcome the single facility presumption. Specifically, the Board found the local manager had significant responsibility for the employees' day-to-day work and exercised the authority to evaluate, hire and discipline employees although the general manager had final authority on hiring and disciplinary matters. The Board characterized such as "meaningful local autonomy and participation in matters directly affecting the service representatives' working lives". *Id.* at slip op. 3. Furthermore, the employer failed to show any significant employee interchange and provided no evidence of interaction between employees in the three facilities. The Board further held:

Given the absence of interchange and work interaction, similarity in skills, pay, and job function does not establish that Hanover has no separate identity.... There is no dependency between service representatives at Hanover and those at York or Frederick. Further, geographic separation of the facilities is significant. The York location is 22 miles from Hanover and Frederick is 50 miles away. There is also an absence of bargaining history. These factors further support a single-location unit. *Id.*

The Employer relies on *Neodata Product Distribution*, 312 NLRB 987 (1993), to argue that the Livermore and Lathrop facilities are a single integrated enterprise. In *Neodata*, the Employer was engaged in product distribution for clients engaged in direct marketing sales. The Employer had two facilities located 3 miles apart. At one facility Employees received and processed orders for delivery of customer's products. Customer product was stored at the nearby facility, where those employees packaged, invoiced and shipped the ordered product to the customer, and entered information into the computer for the billing process, which was handled by employees of the first facility. In concluding that the only appropriate unit consisted of employees at both facilities, the Board found that in performing their coordinated functions, the employees of the two facilities had regular, frequent contact, both in person and by phone. There was specific evidence of regular transfers of employees to perform work at the other facility and audits 24 times per year, where employees from both facilities worked together to verify customer orders and payment. In addition, there was evidence of numerous calls per day between employees working at both facilities. By contrast, the geographic proximity, nature of the operations and nature of contact among employees are significantly different in the instant case. While customer orders and inventory purchasing is done at the Livermore facility, each facility maintains its own large inventory and has its own regular delivery routes. In addition, while there is evidence of some contact between customer service, purchasing and warehouse departments, the evidence reflects that such contact generally goes through department supervisors or leads. Moreover, beyond annual inventory and bin verification, there is no evidence of any regular and frequent contact between employees of different departments or the separate facilities.

Finally, the Employer maintains that the Lathrop facility is only a temporary facility and places much emphasis on the its plan to reunite the facilities in the future. However, the testimony

on this issue at the hearing was summary in nature and provided no specific details regarding when the facilities would be reunited. The General Manager testified that the leases on the two facilities are due to expire at about the same time in approximately two years and the Employer planned to reunite the facilities in “two years or sooner.” Given, the speculative nature of the hearing testimony, I accord little weight to fact that the facilities may be reunited in the future. *See Witteman Steel Mills, Inc.*, 253 NLRB 320, 320 (1980); *Cardinal Timothy Manning, Roman Catholic Archbishop of the Archdiocese of Los Angeles*, 223 NLRB 1218, 1223 (1976).

Based on the above, and the record as a whole, and also noting the lack of bargaining history on a larger scale and that no other labor organization seeks to represent the employees sought within a multi-facility unit, I find that the Employer has not met its burden of showing that the petitioned-for single-facility unit is inappropriate.

Furthermore, I find that the customer service employees and purchasing employees do not share a sufficient community of interest with the warehouse employees so as to warrant their inclusion in the unit. All of these employees work in offices with computers and telephones as their main focus and have limited contact with anyone in the petitioned for unit. They use entirely different equipment to perform their work, are separately supervised and managed, and do not perform any warehouse type work other than their participation in the once or twice a year inventory count and somewhat limited participation in the annual bin verification. While there have been two voluntary transfers from warehouse to customer service and one from warehouse to purchasing, there is no record evidence of any regular temporary transfers between these classifications and those in the petitioned-for unit. For these reasons, the customer service employees and purchasing employees are excluded from the unit.

I also find that the drivers do not share a sufficient community of interest with the warehouse employees so as to warrant their inclusion in the petitioned for unit. The drivers spend the majority of their workday away from the facility driving and meeting with customers. While drivers and warehouse employees both perform some loading of trucks, and use similar equipment to do so, warehouse employees load a limited number of specific routes, accounting for less than one half hour per day, if any at all. Moreover warehouse employees perform this work without any participation from drivers and there is very limited contact between drivers and anyone in the petitioned for unit. Drivers have separate immediate supervision and distinct job requirements, such as a Class A license, maintaining DOT requirements, and submitting to random drug testing. Other than an injured driver working in the warehouse on light duty, there is little to no evidence of drivers currently performing warehouse work, such as using hand held computers, picking orders and labeling products, as a part of their regular duties. While there is evidence that several warehouse employees have made voluntary permanent transfers to driver positions such transfers sought by employees for their own benefit are not given great weight in determining the degree of employee interchange. *Renzetti's Market, Inc., supra.*

The Employer's reliance on *Calco Plating*, 242 NLRB 1364 (1979) is distinguishable. In that case, the Board ordered that drivers be included in a petitioned for production and maintenance unit because the drivers spent one third to one half of their day assisting production employees or working in close proximity thereto. They regularly performed production work in affixing protective coatings to bumpers, pulling bumpers from inventory and putting finished inventory away. In addition, the production and maintenance employees performed regular drivers' work by loading and unloading trucks, making customer deliveries and hauling inventory and supplies between the Employer's facilities. Such extensive and regular

interchange in employee work is not present in the instant case. The Employer's reliance on Napa Columbus Parts Co., 269 NLRB 1052 (1984) is likewise distinguishable. In that case, the Board rejected a warehouse only unit because employees other than the warehouse employees actually performed warehouse work; the drivers assisted warehouse employees in pulling orders and loading trucks; counter sales employees spent half their work time in the warehouse and warehouse employees frequently assisted counter employees.

Based on these factors and the record as a whole, drivers shall be excluded from the appropriate unit found herein.

The Employer has requested that I take administrative notice of the Regional Director's Decision and Direction of Election in Owens & Minor Medical, Inc., 12-RC-8299 (January 14, 1999), for the Employer's assertion that the a similar unit to the unit the Employer is urging in the instant case was found appropriate therein. However, the prior case concerned only one facility, the petitioned for unit included both warehouse and drivers, the purchasing employees were not included in the unit, and there was much more evidence of employee interchange. Such significant factual differences are sufficient to conclude that the proffered Decision and Direction of Election is distinguishable from the instant case.

Accordingly, I shall direct an election among the following employees: All full time and regular part-time warehouse employees, including order pickers, shipping, receiving, and inventory control employees, and lead employees in those positions employed by the Employer at its Livermore, California facility, excluding all other employees, including customer service employees, purchasing employees, drivers, office clerical employees, employees employed by the Employer through third party temporary employment agencies, employees at the Employer's Lathrop, California facility and, guards, and supervisors as defined in the Act.

There are approximately 85 employees in the above described 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.¹ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the 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 Government 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 to vote shall vote whether or not they desire to be represented by TEAMSTERS LOCAL 853, IBT, AFL-CIO.

LIST OF VOTERS

In order to ensure 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 in 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

¹ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

(1969); *North Macon Health Care Facility*, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (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 the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before December 27, 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.

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, D.C., by January 3, 2002.

DATED AT Oakland, California this 20th day of December, 2001.

Bruce I. Friend
Acting Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

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