

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

GOURMET AWARD FOODS NORTHWEST  
DIVISION OF TREE OF LIFE, INC.<sup>1</sup>

Employer

and

Case 36-RC-6048

TEAMSTERS LOCAL NO. 206,  
Affiliated with INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO<sup>2</sup>

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations 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<sup>3</sup> in this proceeding,<sup>4</sup> 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 herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No 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)(7) of the Act, for the following reasons:

The Employer is engaged in the operation of a warehouse and distribution system of natural and gourmet food products at a facility located in Clackamas, Oregon. The Employer also

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<sup>1</sup> The name of the Employer appears as corrected at hearing.

<sup>2</sup> The name of Petitioner appears as corrected at hearing.

<sup>3</sup> A hearing was held in this matter on February 6, 2001, and reopened for the purpose of taking further evidence on March 13, 2001. The parties filed briefs, which have been considered.

<sup>4</sup> The Employer's motion for recusation of the Regional Director is hereby denied.

has employees located in Tacoma and Spokane, Washington, but has no physical facilities in those locations. Petitioner seeks a unit of the Employer's truck drivers employed at the Clackamas facility. The Employer contends that the only appropriate unit is one which includes truck drivers employed in Tacoma and Spokane, and the warehouse employees employed in Clackamas.

The Employer purchased the operations in 1998 from Ray's Food Service, Inc. There is no prior bargaining history.<sup>5</sup> The facility is under the overall direction of Brian Singleton,<sup>6</sup> vice president of operations, who reports to the division president, who is unnamed in the record. A warehouse manager, a transportation manager, and a recruiter report directly to Singleton. At the time of the initial hearing, Gary Deroia was the transportation manager, and he had also been the warehouse manager for about one week.<sup>7</sup> The recruiter<sup>8</sup> is Rick Vincent, who also has duties as a swing shift supervisor in the warehouse. Other warehouse supervisors are: Tom Hartley, receiving (about 25 employees); Tom Orr, swing shift (about 70 employees); John Duncan, inventory control (about 5 employees); Joe Houghton, sanitation and maintenance (about 16 employees). In addition, the warehouse manager directly supervises about 70 other employees in unspecified classifications, and the transportation manager directly supervises all of the truck drivers, including hiring and disciplining them.

There are about 35 truck drivers altogether: 22 in Clackamas, including 15 route drivers, five line drivers, and two part-time drivers; 11 in Tacoma, including one line driver and 10 route drivers; and two route drivers in Spokane.<sup>9</sup> Route drivers make deliveries to the Employer's customers, who are retail grocery stores. Line drivers haul double trailer rigs between Clackamas and Tacoma, a distance of about 145 miles each way, and Clackamas and Spokane, a distance of about 374 miles each way. Three line drivers regularly go to Tacoma, and two regularly go to Spokane. Route drivers stationed in Clackamas have routes in the Greater Portland area, and also north along the I-5 corridor into Washington, including the cities of Vancouver, Centralia, Chehalis, Tumwater, and Olympia, east to Yakima, Washington, and south in Oregon, as far as Ashland. Route drivers stationed in Tacoma have routes as far north as Bellingham, and also deliver to the same stores in Olympia, Tumwater, Centralia, and Chehalis as do Clackamas drivers. Two Clackamas route drivers have a route in Montana. They work as a team, traveling in the same truck.

All of the drivers drive Freightliner semi-tractors. Line drivers pull double trailers; route drivers pull only single trailers. All drivers are required to have commercial driver's licenses (CDLs). Line drivers must also have an endorsement for doubles. The Employer also has three

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<sup>5</sup> In 1990, in Case 36-RC-5231, Petitioner and Teamsters Local 162 jointly filed a petition seeking a unit of drivers and warehousemen employed by Ray's Food Service. The parties signed a Stipulated Election Agreement which described the appropriate unit as including all warehouse employees and all truck drivers, including drivers based in the State of Washington. I take administrative notice that the joint petitioners lost the election in that case.

<sup>6</sup> Singleton, called by the Employer, was the sole witness in the initial hearing.

<sup>7</sup> The Employer intends to hire a new transportation manager.

<sup>8</sup> The record does not reveal the recruiter's range of responsibilities, except that he interviews and hires sanitation and maintenance employees.

<sup>9</sup> Evidence offered in the initial hearing was unclear in many respects regarding the work assignments of the truck drivers. For example, there was testimony that two drivers from Clackamas go to Montana, but the evidence that they are *route* drivers rather than line drivers was elicited only in response to the Order Reopening Hearing. Further, virtually no evidence regarding the Spokane drivers was offered in the initial hearing, nor was the significant evidence that route drivers located in Clackamas deliver to routes in the state of Washington.

trucks (“non-CDL trucks” herein) for use in areas of downtown Portland where streets are narrow. The trucks are 24,000 pounds gross or less, and a CDL is not required to drive them.<sup>10</sup>

Line drivers work Sunday through Thursday, and report for work between 2:00 p.m. and 6:00 p.m. Each line driver who goes to Tacoma makes one roundtrip per day.<sup>11</sup> Route drivers begin work between midnight and 4:00 a.m., and all route drivers work Monday through Friday, except the two in Spokane, who work four days a week, Monday-Tuesday and Thursday-Friday. All drivers have regularly scheduled start times. The Montana team makes two roundtrips per week, leaving on Sunday night between 9:00 and 10:00 p.m., returning on Tuesday afternoon, and then leaving again on Wednesday night. All drivers are paid hourly, except the two who go to Montana, who are paid by the mile. Drivers are paid \$12.41 to \$16.67 per hour. The record does not reveal the mileage rate for the Montana team.

Clackamas line drivers haul loaded trailers to Tacoma, where they drop the trailers, pick up empty trailers, and return to Clackamas. The exchange of trailers takes place on the property of Super Value, one of the Employer’s customers. The Employer has no office or warehouse facility there, but does have a spare trailer stationed there. The trailer is used to store pallet jacks and hand trucks, and is the place where the line drivers leave paperwork for the Tacoma route drivers. Line drivers from Clackamas and route drivers in Tacoma occasionally see each other in passing at the Super Value property and may spend a few minutes in casual conversation. It does not appear that this is a regular occurrence, as their work schedules are such that they normally would not be at the Super Value at the same time. In the initial hearing, an Employer witness testified that line drivers and Tacoma route drivers see each other at Super Value, where they assist each other exchanging trailers and perhaps transferring freight from one trailer to another. In the re-opened hearing, an Employer witness testified that the Tacoma route drivers “may” be waiting at Super Value when the line drivers arrive, and that this “could” happen on a daily basis. However, based on the times at which the various drivers begin their work day, it does not appear that the line drivers and the Tacoma route drivers would normally be at Super Value at the same time.

Line drivers also haul loaded trailers to Spokane, where they drop them on the property of Tidyman’s, one of the Employer’s customers. The Employer does not keep a spare trailer in Spokane as it does in Tacoma, and the line drivers leave paperwork for the Spokane route drivers inside the loaded trailers.

All drivers can communicate with each other through the Nextel radio system in their trucks, but the record does not reveal the specific nature of any communications which occur among drivers over the radio. The team that travels to Montana carries a cell phone, as Montana is out of the range of the radio. A monthly drivers’ meeting is held in Clackamas. Drivers unable to attend in person, including those in Tacoma and Spokane, attend by telephone conference call. All truck drivers are dispatched from Clackamas. There is no specific evidence in the record regarding the dispatch procedure. It appears that each driver has regular scheduled assignments. There is a transportation coordinator, Susanne Berquist, who notifies drivers if a truck is going to be early or late.

There is testimony that Clackamas drivers substitute for Tacoma drivers four or five times a year for vacation relief, but there are no specific details in the record. It appears that there

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<sup>10</sup> I take administrative notice that the state of Oregon requires at least a Class B CDL to drive a truck of over 26,000 pounds gross weight, and a Class A CDL to drive combination vehicles.

<sup>11</sup> The record does not reveal whether the round trip to Spokane requires more than one day.

is a designated relief driver who fills in for a vacationing driver at any of the three locations.<sup>12</sup> One Clackamas driver successfully bid on a job based in Tacoma, but there is little further evidence in the record regarding this voluntary transfer. In the initial hearing, an Employer witness said the transfer occurred “recently.” In the reopened hearing, another Employer witness said the transfer occurred “several years ago.” All drivers are on the same seniority list, which is used for vacation purposes, and for bidding on routes. Routes are only rebid when the incumbent driver vacates the route. Each route driver has established routes for every day of the week.

There are about 186 employees in the warehouse. Classifications include selectors, loaders, inventory control, returns, quality assurance, and sanitation. The Employer prefers candidates who have prior warehouse experience, but also trains otherwise qualified applicants.

There are 80 to 90 selectors who work on two shifts. In addition, on each shift, there are five or six loaders, two or three inventory control employees, six to eight returns employees, five or six quality assurance employees, and ten or 12 receiving employees on day shift, about six receiving employees on swing shift. There are also eight or ten highlift operators per shift.

Selectors are given orders to select, and go through the warehouse picking the products, putting them into boxes and totes.<sup>13</sup> Loaders then take those products, consolidate them on pallets, and load the trucks. Inventory control employees keep track of the inventory and find discrepancies. Returns employees put products back onto shelves. Quality assurance employees check orders after the selector has compiled them, on a random basis. Receiving employees receive all inbound freight. Sanitation employees clean the facility.

Warehouse employees’ pay ranges from \$9.32 to about \$15.00 per hour. There are different pay scales for different warehouse jobs, but there is no specific evidence in that regard. All employees, including both truck drivers and warehouse employees, receive the same benefits and have equal use of the amenities in the Employer’s facility.

Shifts in the warehouse are from 5:00 a.m. to 1:30 p.m., and 4:00 p.m. to 12:30 a.m., Monday through Friday. Loaders may stay later to finish loading trucks. The day shift occasionally works overtime up until 3:30 in the afternoon. In the reopened hearing, the warehouse manager testified that no warehouse employees have scheduled start times other than 5:00 a.m. or 4:00 p.m., even though in the earlier hearing the Employer's witness had testified that some receiving employees work staggered shifts “to help the drivers as they come back.” Drivers who come back with returned product unload their trucks themselves if there are no warehouse employees present.

In Clackamas, drivers spend 45 minutes or longer in the warehouse before starting out. They spend this time taking care of paperwork, doing required safety checks of their trucks and trailers. They also load any refrigerated or frozen products which have been selected but not pre-loaded for them. Some drivers also sometimes otherwise help load their trucks. The work

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<sup>12</sup> Gary Deroia, the former transportation manager, when asked who would fill in for a vacationing Clackamas driver, testified in the reopened hearing that, “In Clackamas that would be -- could be the same relief driver. If he’s not up in the Tacoma or Spokane areas.” Deroia further testified that the “same relief driver” would fill in for a Spokane driver on vacation.

<sup>13</sup> No evidence with respect to the job duties of the various classifications of warehouse employees, a significant factor in community of interest determinations, was offered in the initial hearing.

schedules of the route drivers and of the warehouse employees are such that there may not be warehouse employees present in the facility at any times that the drivers are there.

Warehouse employees (specifically, loaders) sometimes make deliveries when there is a “surprise call” and no truck driver is available. They use one of the non-CDL trucks on these occasions. This happens two or three times a week. Route drivers use the non-CDL trucks every day to make deliveries in downtown Portland. There is testimony that on any day when a route driver needs more hours to complete an eight-hour day, he may, with the permission of the transportation manager, fill out the day by pulling orders in the warehouse. This happens about six times a year. There is also testimony that in addition to the drivers’ responsibility to retrieve any cooler/freezer products from the cooler/freezer area and load them on their trucks, two or three times a week certain drivers will come in and help get the pallets organized and get their own trucks loaded, but there is no specific evidence as to how many drivers do this, or how often. In the past, two warehouse employees have become drivers, one about two years ago, and the other some time before that. No drivers have become warehouse employees.

The truck drivers herein have separate skills and duties from the warehouse employees and historically have been separately supervised. Their wages and hours of work differ from those of the warehouse employees. Further, the truck drivers spend the majority of their time away from the Employer’s facility. There is no significant interchange between the two groups. There is no collective bargaining history,<sup>14</sup> and no labor organization is seeking to represent the warehouse employees.<sup>15</sup> In these circumstances, I conclude that a separate unit of truck drivers is an appropriate unit.

A single-facility unit is presumptively appropriate unless it has been effectively merged into a more comprehensive unit, or is so functionally integrated with another unit that it has lost its separate identity. *J & L Plate*, 310 NLRB 429 (1993); *Dixie Belle Mills, Inc.*, 138 NLRB 629, 631 (1962). To determine whether the presumption has been rebutted, the Board looks at such factors as control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; the physical and geographical location; and bargaining history, if any. *Esco Corp.*, 298 NLRB 837, 839 (1990), and cases cited therein.

The circumstances herein are similar in many respects to those found in *Esco Corp.*, supra, wherein the Board found the single facility unit presumption un rebutted where there was a lack of regular and substantial interchange between employees at different locations, and geographic distances between locations were identical with the geographic distances in the instant case, where there was also centralized operations and labor relations, and employees at all three locations had common skills and functions. However, the instant case is distinguishable from *Esco*, in that here the Employer does not maintain any separate warehouse facilities in Tacoma or Spokane, and there is no local autonomy. Here, the Tacoma and Spokane drivers are functionally integrated with the line drivers, in that the Tacoma and Spokane drivers pick up loaded trailers brought to them by the line drivers, and the line drivers return empty trailers left for them by the Tacoma and Spokane drivers. In addition, some Tacoma route drivers make deliveries to the

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<sup>14</sup> I reject the Employer’s contention that the prior case involving the predecessor employer constitutes bargaining history. In that case, which involved different parties than those involved herein, the parties entered into a Stipulated Election Agreement, and there was no unit determination made by the Board. Further, the Unions lost the election and there is no evidence that any collective bargaining ever occurred.

<sup>15</sup> Petitioner stated in the record that it is unwilling to go to election in any unit including the warehouse employees.

same stores in Olympia, Tumwater, Centralia, and Chehalis as do some Clackamas route drivers. All drivers report to the same supervisor. All drivers are required to have a CDL, are paid according to the same wage scale, and work similar hours. All drivers are on a single seniority list, which is used to schedule vacations.<sup>16</sup> All drivers attend, either in person or telephonically, the same monthly drivers' meeting. All drivers report to the transportation manager.

In these circumstances, I conclude that the single facility unit presumption has been rebutted, and that the appropriate unit is one which includes all of the Employer's truck drivers. Inasmuch as Petitioner stated on the record that it is unwilling to represent truck drivers located in Tacoma and Spokane because they are outside Petitioner's geographic jurisdiction, I shall dismiss the petition.<sup>17</sup>

### **ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is, dismissed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 13<sup>th</sup>, 2001.

Dated at Seattle, Washington this 30<sup>th</sup> day of March, 2001.

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<sup>16</sup> It would appear, although not affirmatively established by the record, that the vacations of the Tacoma and Spokane drivers must be coordinated with those of Clackamas drivers, to facilitate the scheduling of a relief driver.

<sup>17</sup> The Board has consistently refused to predicate an appropriate unit finding upon the scope of a local union's territorial jurisdiction. *John Sundwall & Co.*, 149 NLRB 1022 (1964); *Bowie Hall Trucking*, 290 NLRB 41 (1988).