

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

VOPAK USA, INC.¹

Employer

and

Case 6-RC-11972

GENERAL TEAMSTERS, CHAUFFEURS AND
HELPERS LOCAL UNION NO. 249 A/W
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Gerald McKinney, 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 powers in connection with this case to the undersigned Regional Director.³

Upon the entire record in this case,⁴ the Regional Director finds:

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

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ 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. 20570-0001. This request must be received by the Board in Washington by May 29, 2001.

⁴The Employer timely filed a brief in this matter which has been duly considered by the undersigned.

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)(l) and Section 2(6) and (7) of the Act.

As amended at the hearing, the Petitioner seeks to represent a unit of all full-time and regular part-time drivers employed by the Employer at its Bunola, Pennsylvania facility; excluding all office clerical employees and professional employees, supervisors and guards as defined in the Act, and all other employees. The Employer⁵ agrees with the Petitioner that the classifications sought by the Petitioner are properly included in the unit. However, contrary to the Petitioner, the Employer would also include in the unit employees in the filling department, chlorine department and warehouse. In this regard, the Employer contends that the filling department, chlorine department and warehouse employees share such a community of interest with the rest of the driver unit sought by the Petitioner as to require their inclusion in the unit herein. There are approximately 14 employees in the unit sought by the Petitioner. The Employer seeks to add approximately 11 filling department employees, 3 chlorine department employees and 4 warehouse employees. There is no history of collective bargaining for any of the employees involved herein.

The Employer's Operation

The Employer's facility at issue herein is a distribution center, at which chemicals are warehoused and repackaged for distribution in Pennsylvania, West Virginia, Ohio and New York. The facility is located fifteen miles south of Pittsburgh, Pennsylvania, on the

⁵ The Employer is the result of a merger in 2000 between Chem-Ply E&E US, Inc. and Royal Vopak. Chem-Ply previously operated the facility at issue herein. Royal Vopak operated a chemical distribution facility located in Coraopolis, Pennsylvania. The parties stipulated that the Petitioner represents a unit of drivers and warehousemen employed at the Coraopolis facility.

Monongahela River, and has docks on the river for receipt of bulk shipments of chemicals. The Employer also maintains a railroad spur, which runs through the yard of the facility past the warehouse building, for the unloading of shipments of chemicals that arrive by rail. Goods are additionally delivered to the facility by tanker truck.

The employees in the petitioned-for unit work solely out of the Bunola facility. They are directly supervised by operations manager Eugene Champion. The Employer's drivers operate ten tractor-trailers and four straight truck tankers. The drivers are assigned to particular vehicles but may be required to switch vehicles each day. They have little overnight work. The work to be performed by the drivers begins at the end of the previous workday. At that time the drivers review bills of lading for the next day's deliveries. Upon review of these bills of lading, each driver arranges the bills in the order that they wish to make deliveries the next day. The next morning, before the drivers arrive for work, warehousemen load the trucks based upon the order of the bills of lading as left by the drivers.

Unlike other employees of the Employer, the drivers do not punch a time clock; rather, they keep track of their hours and mileage in a daily DOT logbook. Unlike the non-driver employees of the Employer, drivers are not paid on an hourly basis. Rather, they are compensated based upon the miles they drive, the number of stops they make, and the number of bins they deliver each day. They are only paid an hourly rate for time spent in driver-only safety meetings, when their vehicles are broken down, or when they are delayed at a customer's facility for more than one hour. Saturday and Sunday work is paid at 150 percent of the rate the drivers earn during the week.

Unlike the non-driver employees, drivers may obtain additional assignments if they finish their day's runs early. Each driver is assigned a cell phone and a company credit card for use during the workday, and the drivers are reimbursed for expenses incurred on the road. The drivers use these cell phones to contact Vopak dispatcher George Saul. In emergency situations the drivers may contact operations manager Champion or safety director Scott Morrison. None of the other employees are issued cell phones or credit cards. Among the

employees of Vopak, only drivers are required to maintain a Class A commercial driver's license (CDL), with endorsements for hazardous materials and tanker trucks. Similarly, drivers are the only employees required to take drug tests⁶ or to periodically take physical examinations.

Drivers start each workday in the locker room of the Bunola facility, where they obtain log sheets and bills of lading for that day's deliveries. The log sheets and bills of lading are kept in a desk in which each driver is assigned a drawer. After the driver completes his initial paperwork he is responsible to "pre-trip" his vehicle, making sure that the vehicle is road-worthy by checking its lights, brakes and tires. No other employees of the Employer perform safety checks or maintenance on the vehicles. All maintenance work on the vehicles is contracted out to Ryder Transportation, from whom the vehicles are leased.

When drivers arrive at work their trucks are generally already loaded. Some, but not all, drivers assist warehouse employees in securing the loads in their trucks, prior to leaving on their runs. The drivers do not have fixed routes; their job assignments vary each day, as do their work hours. Routes followed by the drivers depend upon the deliveries they are scheduled to make that day. Deliveries may be made to, among other locations, water plants, sewage plants, steel mills, industrial parks and swimming pools. Many of the drivers' routes are local, although one route is over 500 miles round trip. None of the routes require an overnight stay. The drivers, whose start times range from as early as midnight to 9:00 a.m., make an average of ten to fourteen deliveries during the workday. At each stop the driver will typically unload the material, pick up containers for return to the facility and fill out paperwork. The flexible nature of the drivers' hours and schedules depend on the delivery schedule, the condition of the roads upon which they will drive, and upon personal preference. All other employees work fixed schedules.

⁶ The Employer's operations manager testified that the Employer intends to begin drug testing other employees in the near future.

The drivers attend monthly safety meetings to which no other employees are invited. Other Vopak employees attend separate safety meetings. All employees of Vopak wear identical uniforms, enjoy the same benefits and make use of the same breakroom. About one half of the drivers will have some interaction or help from non-driver employees during an average week. In this regard, the record reflects that some of the drivers may interact with warehouse, filling or chlorine employees for between 15 and 45 minutes a day as the other employees are loading the drivers' trucks.⁷

The drivers and warehouse employees are all directly supervised by the operations manager. All other employees have separate supervision. Solvent plant manager Bob Salka supervises the filling employees and Ken Radabush supervises the chlorine plant employees. Neither Salka nor Radabush has any supervisory responsibility over, or interaction with, the drivers.

In the past, there has been some limited movement between positions. Approximately six years ago and again four years ago, a garage employee transferred to a driver position, and about seven years ago a chlorine department employee became a driver. There have been no other transfers since that time. Drivers may work in the dock area when work is slow, rather than be laid off. This occurred once, two to three years ago, and involved one driver for a limited period of time. Two employees hired two years ago, Bob Campbell and Terry Corwin, were informed by management that they could be moved to the warehouse if work was slow. Neither employee has been so transferred. No drivers have moved permanently to the warehouse or to any other non-driver position with the company. Injured drivers, who are on light duty, may perform work otherwise performed by non-drivers, including individuals in classifications other than those which the Employer seeks to include in the unit.

⁷ The record does not reflect the precise nature of this interaction, or whether the drivers are present during the entire time that their trucks are loaded, unloaded or otherwise serviced by filling, chlorine or warehouse employees.

On a limited basis, non-drivers may do some delivery work. On the weekend, warehouse employees may deliver non-hazardous materials in their personal vehicles. During the summer of 2000, at least one chlorine department employee left the plant to help deliver goods. Filling employees have traveled with tanker drivers once or twice a month to assist with deliveries to certain customers. In performing this work, the non-drivers are paid their regular hourly wages.

Some drivers interact briefly with the warehouse employees when picking up their truck for the day's deliveries, if the load of containers has not yet been secured, and at the end of the day if they bring empty containers back to be unloaded. Similarly, some drivers interact briefly with chlorine department employees if they return with empty cylinders or to exchange bills of lading. From time to time some drivers interact briefly with filling department employees when they pick up tote bins from that department.

The Appropriate Unit

As previously stated, the Employer, contrary to the Petitioner, contends that the filling department, chlorine department and warehouse employees must be included within the petitioned-for unit. The Employer does not argue that the petitioned-for drivers do not share a community of interest. Rather, the Employer argues that drivers, filling department, chlorine department and warehouse employees ". . .share the same community of interest so as to constitute a single bargaining unit."

The Board discussed its position regarding appropriate units at length in Overnite Transportation Company, 322 NLRB 723 (1996). In that case, the Employer sought to include mechanics in a unit of drivers and dock workers requested in the petition. The Employer argued that the mechanics shared a sufficient community of interest to require their inclusion in the petitioned-for unit. The Board stated that it is well settled that employees of an employer may be appropriately grouped in more than one way for the purposes of collective bargaining and the Board's policy is to consider only whether the petitioned-for unit is appropriate. "There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or

the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be 'appropriate.'" (Emphasis in original.) Overnite Transportation Company, supra, 322 NLRB at 723, quoting Morand Brothers Beverage Co., 91 NLRB 409, 418 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951).

Thus, a union is not required to seek the largest or most comprehensive grouping of employees, so long as the unit requested is an appropriate one. Overnite Transportation Company, supra, 322 NLRB at 723. Further, the Board may "find more than one unit appropriate, including units for which there is an overlapping community of interest...." Overnite Transportation Company, 325 NLRB 612, 613 (1998).

In the instant case, it is undisputed that the drivers, whether they drive a tractor trailer truck or a tanker truck, share a community of interest with each other. With regard to the filling, chlorine and warehouse employees, however, I find that they do not share such a close community of interest with the employees sought in the petition as would require their inclusion in the petitioned-for unit.

The Board weighs various factors when analyzing employees' community of interest, including the following: methods of wages or compensation; hours of work; employment benefits; supervision; job qualifications, training and skills; job functions and amount of working time spent away from the site; contact with other employees; integration of job functions and interchange with other employees; and history of bargaining. Overnite Transportation Company, supra, 322 NLRB at 724, quoting Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

With regard to the drivers, the record reveals that, unlike the other employees whose inclusion in the unit is urged by the Employer, they are not paid a straight wage; rather, their pay depends upon the number of deliveries they make, the number of miles they drive, and their willingness to take on extra runs. While the operations manager supervises the drivers and warehouse employees, the filling and chlorine department employees are each supervised by separate departmental supervisors. The drivers work completely different shifts from the other

employees, starting work at any time beginning as early as midnight to 9:00 a.m. and finishing work at various times depending upon the length of the trip or based upon their personal needs.⁸ Plant employees work fixed schedules. The drivers spend the majority of their time away from the facility making deliveries.

While the drivers have some contact with the warehouse employees and, to a lesser extent, with the filling and chlorine employees, while waiting for loads or upon their return to the facility, such contacts are irregular and minimal. During the times that drivers are waiting for their loads, they do not perform warehouse, filling or chlorine work other than helping to secure their loads or unload their empty containers. There have been occasions where drivers have worked performing warehouse, filling or chlorine tasks; however, these instances are temporary and infrequent. While several non-driver employees have applied for and obtained driver jobs, the most recent such move occurred approximately four years ago. There is no evidence that other employees have filled in as drivers. In addition, the drivers are required to possess a CDL license containing endorsements for hazardous materials and tankers as a condition of employment, which is not required of any of the other employees whom the Employer seeks to add to the petitioned-for unit.

Based on the above and the record as a whole, I find that the filler, chlorine and warehouse employees do not share such a close community of interest with the drivers who are sought in the petition as would require their inclusion in the petitioned-for unit. As described above, there are many factors that distinguish these classifications from the requested driver employees. While a unit including filler, chlorine and warehouse employees with drivers might be an appropriate unit, the unit sought in the petition, limited to drivers, is also appropriate. The Board has frequently found a separate unit of truck drivers to be an appropriate unit. See, e.g. Cal-Maine Farms, Inc., 249 NLRB 944 (1980); Pacesetter Corporation, 241 NLRB 1150 (1979);

⁸ Some drivers, who also work as farmers, are permitted to create work schedules that give them the freedom to appropriately operate their farms.

Arkley Lumber Co., 169 NLRB 1098 (1968); St. John's Associates, Inc., 166 NLRB 287 (1967),
enfd 392 F.2d 182 (2nd Cir. 1968); and Mc-Mor-Han Trucking Co., Inc., 166 NLRB 700 (1967).

The Board has repeatedly held that "[I]t is not the Board's function to compel all employees to be represented or unrepresented at the same time or to require that a labor organization represent employees it does not wish to represent, unless an appropriate unit does not otherwise exist." Overnite Transportation Company, supra, 322 NLRB at 724, citing Mc-Mor-Han Trucking Co., Inc., supra, 166 NLRB at 701, quoting Ballentine Packing Company, Inc., 132 NLRB 923, 925 (1961).⁹ It is well settled that more than one appropriate bargaining unit can exist in any particular factual setting. Overnite Transportation Company, 325 NLRB 612, and cases cited therein.

Thus, since the facts herein do not reveal such a close community of interest between the drivers and the filler, chlorine and warehouse employees as would render the requested unit inappropriate, I find that a unit limited to the drivers and excluding filler, chlorine and warehouse employees¹⁰ is an appropriate one. Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by the Employer at its Bunola, Pennsylvania facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

⁹ This is true even where, as here, the Petitioner represents a broader unit at the Employer's other place of business. "The Board does not require a union to seek the same unit at different locations of the same employer even where there is a collective-bargaining history in a broader unit at the other locations." Overnite Transportation Company, supra, 322 NLRB at 724.

¹⁰ Neither party contended, and I do not find, that the maintenance and garage employees, bagging employees, laboratory employees and dispatching employees share such a community of interest as would mandate their inclusion in the petitioned-for bargaining unit. Inasmuch as I am excluding the filler, chlorine and warehouse employees from the unit, I shall also exclude, on the same basis, the maintenance and garage, bagging, laboratory and dispatching employees.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.¹¹ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, 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 and 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.¹² Those eligible shall vote whether

¹¹ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

¹² In order to assure 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 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 hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before May 22, 2001. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

or not they desire to be represented for collective bargaining by General Teamsters, Chauffeurs and Helpers Local Union No. 249 a/w International Brotherhood of Teamsters, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 15th day of May 2001.

/s/Gerald Kobell

Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

420-5000
420-7303
440-1760-6280
440-1760-9167-9233