

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

OWENS & MINOR DISTRIBUTION, INC.¹

Employer

and

Case No. 7-RC-22245

**MICHIGAN TEAMSTERS JOINT COUNCIL
NO. 43, AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO²**

Petitioner

APPEARANCES:

**Craig S. Schwartz, Attorney, of Bloomfield Hills, Michigan, for the Employer.
Gerry M. Miller, Attorney, of Milwaukee, Wisconsin, for the Petitioner.**

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held 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,³ the undersigned 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 The parties filed briefs, which have been carefully considered.

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 Sections 2(6) and (7) of the Act.

The Employer distributes medical and surgical supplies to hospitals and other health care-related customers from its warehouse in Plymouth, Michigan, its only facility involved in this proceeding. The Employer operates about 40 warehouse distribution centers nation-wide. Its home office is located in Richmond, Virginia where all accounts payable operations take place. The Employer's Cincinnati, Ohio office is responsible for all accounts receivable activities.

The Petitioner seeks a unit of all full-time and regular part-time warehouse employees, warehouse lead employees⁴ and drivers; but excluding all office-clerical employees, guards and supervisors as defined in the Act. While the Employer generally agrees with these unit parameters, it contends that the proposed unit is inappropriate as it excludes its buyer and customer service representative employees, whom it considers to be plant-clerical employees. The Petitioner disagrees and contends that the customer service representatives and buyers are office-clerical employees and do not share a sufficient community of interest with the petitioned-for employees to permit their inclusion in the proposed unit. There are approximately 39 employees in the unit the Petitioner seeks to represent, including 32 warehouse employees⁵ and seven drivers. There are approximately nine disputed employees, including three buyers and six customer service representatives (herein sometimes called "CSRs").

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining, and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Interstate Warehousing of Ohio*, 333 NLRB No. 83, slip op. at 6 (2001), citing *Morand Brothers Beverage Company*, 91 NLRB 409, 418 (1950). Moreover, the Petitioner's desire as to the unit is always a relevant consideration, although not a dispositive one, and a union is not

⁴ The parties stipulated that the warehouse lead person, Wally Filipiak, should be included in any unit found to be appropriate.

⁵ The 32 warehouse employees include 19 order pickers, ten shipping and receiving employees, two inventory control coordinator employees and one warehouse lead employee.

required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Interstate Warehousing of Ohio*, supra, slip op. at 6; *Overnite Transportation Company*, 322 NLRB 723 (1996); *Airco, Inc.*, 273 NLRB 348 (1984). Therefore, to determine whether the unit sought by the Petitioner is an appropriate unit, I must consider whether the employees the Petitioner seeks to exclude could appropriately enjoy separate representation. *Interstate Warehousing of Ohio*, supra, slip op. at 6. *Interstate Warehousing of Ohio*, supra, slip op. at 6.

Where the parties disagree as to what constitutes an appropriate bargaining unit, and there is an absence of bargaining history, as here, the touchstone for determining the appropriate bargaining unit is a community of interest analysis. See, *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). In analyzing community of interest among employee groups, the Board considers bargaining history; functional integration; employee interchange and contact; similarity of skills, qualifications and work performed; common supervision; and similarity in wages, hours, benefits and other terms and conditions of employment. *Interstate Warehousing of Ohio*, supra, slip op. at 6.

Under all the circumstances of this case, including as discussed below, I find that the buyers and customer service representatives share a substantial community of interest with the petitioned-for employees and must be included in the unit found appropriate.

Work Situs and Supervision

The Employer's Plymouth facility has an area of approximately 80,000 square feet, of which about 70,000 square feet are devoted to warehouse space and about 10,000 square feet to offices located in front of the warehouse area. Michael Newton, Detroit area director of operations and general manager, heads the warehouse distribution operations. Control over the daily operations and labor relations policy at the facility rests with Newton. Under his direction are Stuart Cameron, warehouse supervisor in charge of warehouse inventory control employees and drivers; Charles Harrison, warehouse supervisor in charge of day shift warehouse shipping and receiving employees and pickers; and, Pam Campbell, office manager in charge of buyers and CSRs and one receptionist.⁶ There is also a warehouse supervisor in charge of afternoon shift order pickers and warehouse lead employees. However, this supervisory position is vacant at the present time.⁷ The Employer also employs sales employees, known as "account managers", who work out of the Plymouth facility under the direction of Mike Brown,

⁶ The Employer also employs an administrative assistant, Stacy Green, who is apparently under the direct supervision of Newton. Neither Green, nor the receptionist, Robin Calibeo, is at issue in this proceeding.

⁷ The parties stipulated, and I find, that the above noted employees are statutory supervisors.

area director of sales. These employees spend a majority of their working time on the road and are not at issue in this proceeding.

The buyers and CSRs work in the office area, which is separated by a wall from the warehouse, during the day shift from 8:00 a.m. to 4:30 p.m.⁸ They are hourly paid and they punch the same time clock utilized by the warehouse and driver employees, which is located in the repair room, just outside the warehouse area. They work alongside each other in cubicles, each containing a computer, telephone and necessary office supplies.

Working Conditions

The buyers and CSRS do not wear uniform and dress in casual-business attire.⁹ They are subject to the same work rules, employee handbook and standards of conduct and receive the same fringe benefits, meal times¹⁰ and break times as the petitioned-for employees. They share the same rest rooms, smoking area and parking areas as the petitioned-for employees. They also attend the same monthly employee meetings, holiday parties and office functions as the petitioned-for employees. They are also eligible to participate in the same bonus incentive program that is based on the productivity of the entire facility while they receive separate training from the petitioned-for employees; the extent of their training appears to be on-the-job training.

Work Integration and Contacts

The buyers are responsible for purchasing medical supplies from the Employer's clients and managing the warehouse stock to ensure that there is enough inventory to meet customer demands and that there is not too much inventory to overstock the warehouse. The buyers order medical supplies from about 1,000 different vendors, utilizing the Employer's computer order system, called "Manugistics", to generate purchase orders on a daily basis. Typically, a purchase order is transmitted to the vendor either electronically, through the computer system, or by fax. The vendor then delivers the shipment to the warehouse for receipt by warehouse receiving employees, usually

⁸ Most of the warehouse employees that work on the day shift work from 6:00 a.m. to 2:30 p.m. However, the record indicates that approximately two warehouse employees, including day shift warehouse picker, Matt Vega, work similar hours to the buyers and customer service representatives, from 8:30 a.m. to 4:00 p.m. There are also some warehouse employees that work on the afternoon shift; however, the record is unclear as to the specific hours of the afternoon shift.

⁹ Only the Employer's drivers are required to wear uniforms. The warehouse employees dress in casual attire usually consisting of blue jeans and t-shirts.

¹⁰ The buyers and customer service representatives generally take their lunch break at noon while the warehouse employees have earlier staggered lunch times.

between 6:00 a.m. to noon. The incoming goods either replenish warehouse inventory or are prepared for later delivery by the Employer's drivers to the Employer's customers.¹¹

In receiving shipments from the vendors, warehouse-receiving employees unload them onto a dock and sort them by pallet. They then access the purchase orders that have been generated by the buyers into radio-frequency (RF) hand-held computers at the time the original orders were placed. The receiving employees label the shipments and close them out for pick-up by warehouse picker employees who stock the items until they are retrieved for customer delivery time.

There frequently are discrepancies between the shipments ordered by the buyer and the materials received by the warehouse. The discrepancies are identified by the warehouse receiving employees who are instructed to complete an "over short and damaged" (OSD) form when this occurs. The receiving employees complete the top half of the OSD form documenting the discrepancies involved. The OSD form is then routed back to the buyer for completion of the bottom half of the OSD form that deals with resolution of the problem. In this regard, the buyers are in regular communication with warehouse inventory control employee Korpi, who is responsible for returning items to vendors and receiving re-ordered items for expedited shipment. Korpi maintains an in-box in the office area to drop off and pick up OSD forms, as well as other forms discussed below. The buyers, on occasion, go to the receiving dock to check out erroneous shipments.

The buyers also are responsible for inter-branch transfers (IBTs) of stocked items to and from the Plymouth facility from other Employer distribution centers around the country. There are about one to five IBTs that take place on a daily basis. In this regard, the buyers are in regular contact with warehouse picker employee Vega, who is responsible for shipping out all IBTs on a priority basis.

The buyers maintain contact with the CSRs with respect to stocking issues. In this regard, the CSRs communicate changes to the buyers regarding increased or decreased customer desire for certain items in order to avoid back orders or over-stocked situations.

As stated above, the CSRs work in the office area alongside the buyers. They process customer orders on their computer systems, which orders are then transmitted to warehouse employees via their hand-held RF computers, directing the warehouse employees as to which merchandise to pick and prepare for shipment. The CSRs also regularly communicate their customer orders, either electronically, by telephone or face-to-face, to the warehouse inventory control employees, particularly when there is a

¹¹ Most customer deliveries are done by the drivers on the afternoon shift (4:00 p.m. to midnight) and night shift (2:00 a.m. to 10:00 a.m.) and are complete by 10:00 a.m.

specialized issue involved such as a last-minute shipping request add-on, an expedited shipment request or a request to trace a certain item order.

The warehouse inventory control employees regularly receive calls or other contacts concerning returned items from CSRs. In this regard, when a customer desires to return goods, a CSR is responsible for completing a “request for return authorization” form and gathering pertinent return information from the customer. The customer service representative then notifies the warehouse that there are goods that need to be retrieved from the customer. The warehouse inventory control employees¹² go to the warehouse in-box located in the office area where the CSR has placed the return form. For pick-up of the items¹³, the form later is forwarded to a driver. In turn, the driver leaves a copy of the return form with the customer and returns to the warehouse with another copy. The returned items are then re-stocked by the warehouse shipping and receiving employees and the return form is returned to the inventory control employees who complete the form by verifying the returned goods and identifying the type of return. Finally, the inventory control employee transmits the form to the CSR to process the customer credit.

On occasion, the CSRs go into the warehouse themselves, or contact warehouse employees by telephone, to check when a shipment is expected into the warehouse. In this regard, the customer service representatives typically work with inventory control employee Korpi.

The buyers and CSRs do not perform any office accounting, accounts payable or accounts receivable work. Rather, the Employer’s Richmond and Cincinnati offices, as stated above, handle these business operations. General Manager Newton, rather than the customer service representatives and buyers, is responsible for the facility-related spending and payment of bills. Administrative assistant Green orders office supplies and processes payroll at the Plymouth facility. Receptionist Calibeo answers all office-related telephone calls. Thus, from the record, neither the CSRs nor the buyers perform any traditional office-clerical employee duties.

There is no record evidence that any of the CSRs or buyers previously worked as warehouse or driver employees; nor any evidence that the latter have become CSRs or buyers. None of the customer service representatives or buyers performs the work of warehouse employees, except that the former assist with the yearly inventory.

In considering the above and the record as a whole, it appears that the buyers and CSRs comprise integral links in the Employer’s order flow process. They are responsible

¹² Most often, the customer service representatives work with inventory control employee Korpi to resolve these issues.

¹³ The record indicates that if the items are not ready for pick-up by the driver, the driver may communicate this directly to the customer service representative so he/she may contact the customer.

for monitoring incoming merchandise and coordinating those responsibilities with purchases, customer orders and the overall inventory in order to facilitate the shipment process. The inventory information that buyers and CSRs utilize is received either on-line, telephonically or face-to-face from warehouse inventory control and receiving employees and is dispatched in the same manner to warehouse pickers and shipping employees.

Buyers and CSRs have significant work-related contact with other employees in the warehouse and office areas. As described above, the buyers, on occasion, go into the warehouse to investigate erroneous shipments. However, they are in regular communication with warehouse personnel responsible for returning items to vendors and receiving re-ordered items for expedited shipment. Likewise, CSRs are in regular communication with warehouse employees regarding items returned by customers. Indeed, there is a warehouse in-box in the office area for warehouse employees to drop off and pick up forms and paperwork relating to vendor and customer returns.

Additionally, buyers and especially customer service representatives are in continuous contact with warehouse employees through the Employer's computer system and the hand-held RF units. Both groups of employees work together to accomplish the Employer's ultimate production goal of receiving orders and thereafter assuring the prompt delivery of the client's product to a customer. *Neodata Product/Distribution, Inc.*, 312 NLRB 987, 988 (1993). Notwithstanding their physical separation of work areas at the distribution center, these two groups of employees are closely integrated with each other functionally and effectively operate as a single unit with each group participating equally and fully at various stages in the Employer's overall sales process, which consists of the purchasing of merchandise and the processing and filling of customer orders for its clients' products. *Neodata Product/Distribution, Inc.*, supra at 988; *Avon Products, Inc.*, 250 NLRB 1479, 1484 (1980). Thus, the work of the warehouse employees in physically moving product is distinct but functionally integrated with the work of the buyers and customer service representatives who gather, record and disseminate information and records concerning that movement. *Interstate Warehousing of Ohio*, supra, slip op. at 7.

Buyers and customer service representatives have schedules that overlap with virtually all of the petitioned-for employees except the drivers. All employees are paid hourly and receive the same benefits. All employees receive the same amount of time for breaks and meals, are subject to the same work rules, employee handbook and standards of conduct, and attend the same monthly meetings.

In these circumstances, I find that the disputed employees are plant clerical employees whose interests are closely related to those of the warehouse employees and drivers and are appropriately included in the unit found appropriate herein. *Healthco, Inc.*, 233 NLRB 835, 836 (1977); *Interstate Warehousing of Ohio*, supra, slip op. at 6;

John H. Hansen Co., Inc., 293 NLRB 63, 65 (1989); *Roskin Brothers, Inc.*, 274 NLRB 413, 414-415 (1985); *S & S Parts Distributors Warehouse, Inc.*, 277 NLRB 1293, 1296 (1985); *Jacob Ash Co.*, 224 NLRB 74 (1976).

Moreover, the record evidence does not support Petitioner's contention that the buyers and customer service representatives are office-clerical employees. Although they have separate immediate supervision and work in the office area, buyers and CSRs do not handle and route incoming calls, do not perform any billing or collection duties and do not handle any payment functions. There is no record evidence that they have input regarding purchasing or pricing of merchandise. In short, these employees do not have duties relating to general office operations and are not office-clericals. See, *Mitchellace, Inc.*, 314 NLRB 536, 537 (1994); *Brown & Root, Inc.*, 314 NLRB 19 (1994); *Columbia Textile Services, Inc.*, 293 NLRB 1034, 1037-1038 (1989).

5. Based on the foregoing reasons, and the record as a whole, I find that the following employees constitute an appropriate unit of employees for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse employees, warehouse lead employees, drivers, buyers and customer service representatives; but excluding all office-clerical employees, account managers, guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.¹⁴

Dated at Detroit, Michigan, this 20th day of June, 2002.

(SEAL)

/s/ William C. Schaub, Jr.

William C. Schaub, Jr.
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National Labor Relations Board
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420-2900

¹⁴ Despite being requested to do so, the Petitioner has not stated, either at the hearing or in its brief, whether it wished to proceed to an election should the above, broader, unit be found appropriate. I am satisfied administratively that the Petitioner's showing of interest is sufficient for the above unit.

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