

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

RYDER TRANSPORTATION SERVICES^{1/}

Employer

and

CASE 7-RC-22287

DISTRICT LODGE 60, LOCAL LODGE 82,
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

Petitioner

APPEARANCES:

Robert L. Duty, Attorney, of Detroit, Michigan, for the Employer.

David L. Porter, of Cincinnati, Ohio, for the Petitioner.

DECISION AND ORDER

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, the undersigned finds:^{2/}

¹ The Employer's name appears as set forth in the petition and clarified at hearing.

² Both parties filed briefs that were carefully considered.

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. For the following reasons, 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) and (7) of the Act.

Petitioner seeks an election in a two-employee unit composed of Kim Reaume, a customer service coordinator, and John Simm, a transfer driver who also performs facility maintenance work. Petitioner's sole rationale for grouping the employees is that they share a community of interest with each other. The Employer contends that the constituents lack a community of interest. For the reasons discussed below, I agree with the Employer that the unit is inappropriate on community-of-interest grounds.

The Employer, which leases trucks, tractors, and trailers primarily to commercial customers, repairs its Michigan fleet at roughly 40 maintenance locations grouped into three Customer Business Units (CBUs). The Detroit CBU, spanning eight facilities in Highland Park, Detroit (Fort Street), Taylor, Ann Arbor, Jackson, Kalamazoo, Battle Creek, and Lansing, is headed by Senior Customer Service Manager Gary Kleehammer, who oversees the maintenance work performed at the eight shops. Each shop's location manager, called a service team leader, reports directly to Kleehammer.

The Highland Park facility, the shop at issue, is led by Service Team Leader Tom Shuamake.³ Shuamake heads 15 mechanics, who recently voted for representation by Petitioner in Case 7-RC-22261, and Customer Service Coordinator Kim Reaume. Shuamake has also supervised the facility maintenance work of John Simm. However, Simm's driving duties, as well as those of an unnamed part-time transfer driver who was recently assigned to Highland Park, are superintended by Rental Manager Russell Moran, whose office is in Taylor.⁴ Whether the Highland Park facility is staffed by additional employees was not disclosed.

³ The parties stipulated, and I concur, that Senior Customer Service Manager Gary Kleehammer and Service Team Leader Tom Shuamake are statutory supervisors by virtue of their authority to hire, fire, and discipline employees.

⁴ I adopt the parties' stipulation that Rental Manager Russell Moran is a supervisor within the meaning of the Act based on his authority to hire and discipline employees.

Customer Service Coordinator Reaume supports the work of the mechanics by ordering, inventorying, and retrieving parts and supplies, helping to prepare repair orders, answering the telephone, filing, and cleaning the parts room. She works weekdays from 7:00 a.m. to 3:30 p.m. at the hourly rate of \$14.35. Except for two days each year, when she assists doing inventories at other Employer shops, her time is spent at the Highland Park facility, where she has routine contact with mechanics, parts suppliers, and, by telephone, customers and other customer service coordinators.⁵ Although there is cursory evidence that Reaume also interacts with drivers, the frequency of and occasions for those contacts were not explored.

Since his tenure began in 1990, John Simm has driven and performed maintenance duties in varying proportions. He spent his first six years driving, first as a transfer driver and then as a wrecker driver. From 1996 to 2000, his primary assignment was changed to custodial work at Highland Park, although he substituted once or twice weekly as a transfer driver. From 2000 through March 2002, he served as a transfer driver regularly and as a maintenance employee occasionally. During the period April to August 2002, Simm almost exclusively performed maintenance tasks at Highland Park, such as cleaning, painting, mopping, plumbing, and changing light bulbs. Very shortly before the hearing, the Employer returned Simm to full-time transfer driving.

As a transfer driver, Simm's function is to move tractor-trailers and other vehicles to different locations as needed. He daily embarks from and returns to Highland Park, but most of his day is spent either on the road or at other facilities. Rental Manager Moran, to whom all transfer drivers report, visits Highland Park about once each week, although Simm sometimes does not see him for a month at a time. Simm's driving instructions are relayed by his fellow transfer drivers, with whom he meets daily. Unlike Reaume, Simm is required to possess a commercial driver's license, maintain a good motor vehicle driving record, and satisfy other U. S. Department of Transportation regulations. Pursuant to a raise recommended by Service Team Leader Shuamake in April 2002, Simm earns \$11.25 per hour for shop work and city driving, and an undisclosed mileage rate for over-the-road driving.

Reaume and Simm enjoy the same standard fringe benefits and attend the same shop safety meetings. They are invited to the same Employer-sponsored social outings. Their uniforms, furnished by the Employer, are similar in color, although the shirts are of different styles and only Reaume must wear steel-toed boots.

Resolution of unit composition issues begins with an examination of the petitioned-for unit. If it is appropriate, the inquiry ends. *Bartlett Collins Co.*, 334 NLRB No. 76, slip op. at 1 (July 11, 2001). In determining the threshold issue of

⁵ The record implies that Reaume is the sole customer service coordinator at Highland Park. There are two at each of Taylor, Kalamazoo, and Lansing, and one at Ann Arbor.

appropriateness, the Board is guided by the principle that it need endorse only an, not the most, appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 419 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951). Appropriateness normally depends upon community-of-interest factors such as mutuality of wages, hours, and working conditions; commonality of supervision; similarity in skills and functions; frequency of contact and interchange; and functional integration. *Ore-Ida Foods*, 313 NLRB 1016 (1994). A union's desire is always a relevant, but must not be a dispositive consideration. *E. H. Koester Bakery & Co.*, 136 NLRB 1006 (1962).

Reaume did not share a close community of interest with Simm even during his most recent temporary detail as custodian. Now that Simm has resumed driving on a full-time basis – an Employer decision the motive for which I am foreclosed from analyzing in this representation proceeding, *Texas Meat Packers*, 130 NLRB 279 (1961) -- the evidence militates more strongly against a community-of-interest finding. Reaume is a clerk whose chief duty is to prepare and organize paperwork generated in the course of the mechanical repairs performed at the Highland Park facility. In contrast, Simm is a driver of vans, trucks, tractor-trailers, auto carriers, and tow dollies who spends most of his time outside of the shop.⁶ Owing to their disparate functions, their skills and job qualifications are markedly different. They are on separate lines of supervisory command. While they share the same core hours, there is no evidence that Reaume ever works overtime, which Simm must do as his driving assignments demand. Although Simm receives an hourly wage, as does Reaume, he is paid by the mile for over-the-road work. Reaume's duties directly support the work of the unionized mechanics, but not that of the drivers, with whom, as far as the record reveals, she has little contact. A traditional community-of-interest analysis yields scant reason to group Reaume and Simm together in a separate unit.

Where, as here, the petitioned-for employees' community of interest is not separate and distinct so that they constitute their own appropriate unit, it nonetheless may be possible to combine them under the Board's residual-unit principle. *Kaiser Foundation Health Plan of Colorado*, 333 NLRB No. 66, slip op. at 2, fn. 7 (Mar. 9, 2001). A residual unit consists of employees who are omitted from established bargaining units and risk being disenfranchised, if not granted voting eligibility in a separate group.

However, due process considerations prevent a finding at this time on the residual-unit question. To be appropriate, a residual unit should include all of the unrepresented employees of the types covered by the petition. *Carl Buddig & Co.*, 328 NLRB 929 (1999); *Syracuse University*, 325 NLRB 162, 167 (1997); *Fleming Foods*, 313 NLRB 948 (1994); *Armstrong Rubber Co.*, 144 NLRB 1115, 1119 fn. 11 (1963). Because

⁶ The list of vehicles within the transfer driver's purview is taken from a written job description.

neither party raised the notion of federating Reaume and Simm in a single unit on a residual basis, the parties did not have an opportunity to address whether Reaume and Simm constitute all of the unrepresented employees in their respective classifications.⁷ The issue not having been raised, litigated, or briefed, it would be improper for me to decide it now. *Four Seasons Solar Products Corp.*, 332 NLRB No. 9, slip op. at 4 (Sept. 15, 2000).

Petitioner stated at the hearing that it would proceed to an election in any unit found appropriate. No alternative unit has been proposed, and, on this record, none is found appropriate. Accordingly, no question concerning representation has been raised, and the petition is dismissed.

⁷ The record raises more questions on this point than it answers. First, within the Detroit CBU, Reaume is one of eight customer service coordinators and Simm is one of at least four transfer drivers. Although there may be grounds for narrowing the scope of a residual unit to the single Highland Park facility, the parties did not have an opportunity to address the issue of scope. Second, even if a residual unit were limited to Highland Park, there is no apparent rationale for including Simm but excluding the other part-time transfer driver based in Highland Park. Third, including Reaume in a residual unit would arguably necessitate the inclusion of other unrepresented Highland Park clerks. The record does not reveal whether additional unrepresented clerks are employed there.

ORDER

IT IS HEREBY ORDERED that the petition be, and hereby is, dismissed, without prejudice.⁸

Dated at Detroit, Michigan, this 23rd day of August, 2002.

(SEAL)

/s/ William C. Schaub, Jr.

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Classification Numbers

420 8406

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⁸ Under the provisions of the Board's Rules and Regulations, a request for review of the Decision may be filed with the National Labor Relations Board, addressed to **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **September 6, 2002**.