

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**FALCON TRANSPORT/G.D. LEASING
OF INDIANA, INC.**

Joint Employers

and

Case No. 8-RC-16405

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION NO. 20**

Petitioner

DECISION AND DIRECTION OF ELECTION

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.¹

The following jointly employed employees of Falcon Transport/G.D. Leasing, Inc., (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 and mechanics jointly employed at Falcon Transport/G.D. Leasing, Inc.'s terminal located in Toledo, Ohio, but excluding all office clerical employees, and professional employees, guards and supervisors as defined in the Act.

Approximately 116 employees are in the voting group found to be appropriate.

¹ All parties appeared and had the opportunity to be heard at the hearing. The Employer and Petitioner filed post-hearing briefs that were duly considered. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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. The labor organization involved claims to represent certain employees of the Employer. 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.

I. Issues

There are two issues to be decided in this matter. The first issue is whether Falcon Transport, Co. and G. D. Leasing, Inc are joint employers. The second issue is whether the drivers and mechanics employed by the Employer at its Toledo, Ohio terminal constitute an appropriate bargaining unit. The Petitioner contends that Falcon Transport, Co. (“Falcon”) and G.D. Leasing, Inc. (“G.D. Leasing”) are joint employers. It further asserts that the appropriate unit would be the drivers and mechanics employed at the Toledo, Ohio terminal. The Employer’s position is that Falcon Transport, Co. and G.D. Leasing, Inc. are separate companies. It further argues that the only appropriate bargaining unit would include the drivers and mechanics at both the Toledo and Twinsburg, Ohio terminals.

II. Decision Summary

The Petitioner’s contention that G.D. Leasing, Inc. of Indiana and Falcon Transport, Co. are joint employers is based upon G.D. Leasing, Inc. of Indiana being a supplier of employees to Falcon Transport, Co., and Falcon Transport controlling the day-to-day functions of the employees. The Petitioner also contends that a single unit at the Toledo location is appropriate because the Toledo and Twinsburg, Ohio terminals have separate local management; there is little or no employee interaction or interchange; the employees have different skills and duties; and there is no bargaining history.

The Employer asserts that they are separate companies and are not joint employers. The Employer also contends that a unit comprised solely of the Toledo employees is not appropriate as the two Falcon terminals, are functionally integrated and dependent upon each other. Therefore, the appropriate unit consists of the employees employed at both the Twinsburg and Toledo, Ohio terminals.

I find that the drivers and mechanics are jointly employed by G.D. Leasing, Inc. and Falcon Transport, Co. and that they constitute a joint employer under the Act. I also find that the single unit comprised of the full-time and regular part-time drivers and mechanics at the Toledo, Ohio terminal is an appropriate bargaining unit.

II. Facts

Falcon Transport Co. (“Falcon”), is an Ohio corporation engaged in interstate and international transportation of goods with headquarters in Youngstown, Ohio. Falcon is a motor carrier with operating rights to transport general commodities such as automotive parts made of iron, steel, and/or plastic. Falcon operates from approximately twenty (20) transportation terminals mostly located in the eastern half of the United States. Two (2) transportation terminals are involved here, located in Twinsburg and Toledo, Ohio. The Twinsburg location has thirty-three (33) drivers and two (2) mechanics. The Toledo facility has one hundred four (104) drivers and twelve (12) mechanics. Falcon directly employs the terminal managers, dispatchers and administrative staff at its terminal locations.

G.D. Leasing of Indiana, Inc. (“G.D. Leasing”), is an Indiana corporation. G.D. Leasing is a wholly owned subsidiary of Falcon with its headquarters in Gary, Indiana. G.D. Leasing is in the business of staffing, training and administering benefits for drivers and mechanics located solely at Falcon terminals. According to Kenneth Daley, Vice President of Operations – Falcon, there is no written agreement between G.D. Leasing and Falcon. There is an oral agreement with G.D. Leasing to supply Falcon with drivers and mechanics, which thereby grants Falcon the right to control the drivers and mechanics.

The record establishes that the Twinsburg and Toledo terminals are approximately 125 miles apart. The two terminals have separate terminal managers reporting to the Director of

Chrysler Operations and indirectly to the Vice President of Operations at Falcon. The terminal managers, located in Twinsburg and Toledo, work independently along with their dispatchers to assign drivers and mechanics as required for their respective terminals. The record indicates that the terminal managers and dispatchers have been afforded local autonomy and supervision over employees. The local managers are responsible for meeting customer demands, for the daily supervision of employees, and for providing assignments and handling minor discipline matters.

G.D. Leasing does not supervise the drivers or mechanics; instead, the drivers and mechanics are recruited and hired by G.D. Leasing for assignments at Falcon terminals. However, the drivers and mechanics are paid by and receive their benefits from G.D. Leasing. The terminal dispatchers transmit payroll information to the payroll department located in Falcon's Youngstown headquarters. That information is then submitted to ADP, Inc. Falcon VP Kenneth Daley explained that if employees have questions about their benefits, they may call G.D. Leasing in Indiana or a benefits administrator at Falcon in Youngstown, Ohio.

During orientation the drivers receive a drivers handbook from G.D. Leasing. Nevertheless, after orientation the handbook rules are enforced on a daily basis by Falcon management. The record also established that Falcon has implemented a new performance evaluation system for its employees, including the drivers and mechanics. When performance problems arise, Falcon managers have the authority to provide warnings, and if necessary, to demand that a driver or mechanic's employment be terminated. Falcon management directly supervises the drivers and mechanics by determining which drivers are assigned to particular trucks, and by monitoring their performance and ensuring that the drivers are in compliance with Department of Transportation (DOT) regulations. Management at the Falcon terminals also conducts local safety meetings for the drivers and mechanics as required by both companies.

Additionally, there is a distinction between the Twinsburg and Toledo terminals in the type of trailers utilized, as well as, in the skills and duties of the drivers. The drivers at both Twinsburg and Toledo are required to maintain a Commercial Drivers License (CDL), but the drivers in Twinsburg are required to have endorsements to drive double-trailers. The drivers at Twinsburg take product from the Daimler-Chrysler plant located in Twinsburg to a drop pad located at Exit 13 along the Ohio Turnpike. The Twinsburg drivers, using a “cab over” tractor then take double-trailers of product to a drop pad located at Exit 4 along the Ohio Turnpike in Toledo. Once the double-trailers are driven by Twinsburg drivers to the drop pad at Exit 4 in Toledo, the trailers are broken apart into single-trailers.

Generally, drivers domiciled in Toledo shuttle single-trailers, using “conventional cabs”, full of product to a Daimler-Chrysler plant in Ontario, Canada or the Detroit, Michigan area. The Toledo drivers are not required to possess a CDL with a double-trailer endorsement. Therefore, the majority of drivers in Toledo drive single-trailers roundtrip from Toledo to Ontario, Canada or the Detroit area. The requirement of a CDL with a double-trailer endorsement limits the drivers’ ability to transfer and/or interchange from the Toledo to the Twinsburg terminal where double-trailers are driven.

There is also little interaction between the Twinsburg and Toledo drivers and mechanics. The record indicates the main opportunity for employee interaction arises in Toledo at the Exit 4 drop pad. The Exit 4 drop pad is where the Twinsburg double-trailer drivers arrive with product, and break apart the double-trailers, allowing the Toledo single-trailer drivers to transport the product to customers. However, testimony indicates that the double-trailer drivers are responsible for breaking apart their own double-trailers and then leaving the resultant single-trailers for the Toledo drivers. Twinsburg double-trailer drivers are not required to hand paperwork, such as shipping documents, bill of lading, or export documentation, directly to the

Toledo single-trailer drivers. Falcon VP Daley explained that the paperwork typically remains in the trailer's bulkhead in a protective "bubble cover" where the Toledo drivers know to retrieve it. On some occasions, when an order is being expedited, the Twinsburg drivers are given specific instructions from the dispatchers to hand the paperwork directly to the Toledo drivers or to give the Toledo drivers a message. However, the majority of the time the trailers are left with the paperwork at the drop pad for pick-up, which substantially limits the amount of interaction between the drivers. The record also reveals that the mechanics from the two terminals have even less interaction. They are assigned to the terminals which are 125 miles apart and have limited reason to travel to the other terminal.

Joint Employer Issue

As set forth in **M.B. Sturgis, Inc.**, 331 NLRB 1298, 1301 (2000), to establish that two or more employers are joint employers it must be shown that the entities share or co-determine those matters governing essential terms and conditions of employment. See also **NLRB v. Browning-Ferris Industries**, 691 F.2d 1117, 1123 (3rd Cir. 1982); **Riverdale Nursing Home**, 317 NLRB 881 (1995); **O-J Transport Company, Inc.**, 333 NLRB No. 168 (May 11, 2001). Under this standard, both parties must meaningfully affect matters relating to the employment relationship such as hiring, firing, discipline, supervision and direction. **Riverdale Nursing Home**, 317 NLRB at 882, citing **TLI, Inc.**, 271 NLRB 798 (1984).

As set forth above, the record fully supports a finding that while employees are hired and on the payroll of G.D. Leasing, in all other respects, Falcon controls their daily terms and conditions of employment. Therefore, I find that Falcon and G.D. Leasing are joint employers of the drivers and mechanics in the unit found appropriate herein.

Appropriate Bargaining Unit

The Petitioner in this case seeks a unit composed of only those drivers and mechanics employed at the Employer's Toledo terminal. Under Board precedent, a union need only seek an appropriate unit, not the most appropriate unit. **Overnite Transportation Co., 322 NLRB 723 (1996)**. Furthermore, the Board has found that single-terminal units in the transportation industry are presumptively appropriate. **Wayland Distributing Co., 204 NLRB 459 (1973)**; **Alterman Transport Lines, 178 NLRB122 (1969)**; **Groendyke Transport, 171 NLRB 997 (1968)**.

The presumption in favor of a single-unit terminal can be rebutted if there is sufficient contrary evidence presented by the employer. **Greenhorn & O'Mara, Inc., 326 NLRB 514 (1998)**. Here, the Employer did not present sufficient evidence to rebut the presumption in favor of the single-terminal unit requested by Petitioner. The single-terminal unit requested by the Petitioner is presumptively appropriate unless the Toledo and Twinsburg terminals have been so effectively merged into a comprehensive unit or so functionally integrated that they have lost their separate identity. **J&L Plate, 310 NLRB 429 (1993)**; **Dixie Belle Mills, 139 NLRB 629 (1962)**. To determine whether the presumption in favor of the single-terminal has been rebutted, the following factors are considered: past bargaining history; distance between terminals; central control of labor relations; local autonomy; extent of interchange and interaction of employees; similarity of skills and functions; and functional integration. **D&L Transportation, 324 NLRB 160 (1997)**. In this case, there is no common collective bargaining history and no labor organization seeking to represent a more comprehensive unit. The distance between the terminals, approximately 125 miles, adds to the lack of interchange and interaction among the employees, favoring a single-terminal unit. **Dixie Belle Mills, 139 NLRB at 632**.

The record establishes that all the employees are hired and receive orientation centrally. This factor favors finding a multi-location unit. **R & D Trucking, Inc., 327 NLRB 531 (1999)**. However, such factors are not controlling when, as here, there is local supervision and local authority at each single location. Here, the record shows the terminal managers are responsible for meeting the customer demands, daily supervision of employees, providing assignments and handling minor discipline matters. Centralization of hiring and formal discipline is not sufficient to rebut the presumption that a single-terminal unit is appropriate. **D&L Transportation, Inc., 324 NLRB at 161**.

Furthermore, any interaction of the drivers and mechanics from the two terminals is merely incidental. The record demonstrates that the double-trailer drivers from Twinsburg typically do not personally hand paperwork or interact with the single-trailer drivers from Toledo unless given special instructions. The drivers are exchanging and dropping off trailers, they are not interacting with each other. **Bowie Hall Trucking, Inc., 290 NLRB 41 (1988)**.²

The lack of substantial interchange of employees, due in part to the differences in CDL endorsements also supports the presumption in favor of a single terminal. To rebut the presumption in favor of the single terminal unit, the interchange between the drivers or mechanics would need to be substantial or significant. **Bowie Hall Trucking, Inc., 290 NLRB at 42**. Here, it is negligible at best. The record evidence does not support a conclusion that employees are transferred regularly between the terminals except in rare instances.

² The Employer in its post-hearing brief relied upon **Brv-Fern Care Center, Inc., 21 F.3d 706 (1994)**. In **Brv-Fern**, there was virtually no contact between the employees, but there was functional integration which supported the inclusion of employees from a separate location. The Employer's reliance on this case is misplaced. The major difference is that the Union in **Brv-Fern** was contending a multiple location unit was appropriate. In the instant case, the Petitioner is contending the single-unit is appropriate; therefore, the rebuttal presumption in favor of the single-terminal of Toledo applies and the Employer had the burden to rebut that presumption. Furthermore, the **Brv-Fern** case involved only two (2) employees who had previously worked at the nursing home before transferring to the satellite laundry facility located 5-miles away.

Thus, I find that the Employer has failed to rebut the presumption that the single terminal unit sought by the Petitioner is appropriate. Therefore, I conclude that the unit sought by the Petitioner composed only of the drivers and mechanics employed at the Employer's Toledo, Ohio terminal is appropriate.

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 issue subsequently, subject to the Board's Rules and Regulations. 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 the 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 shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Teamsters, Local Union No. 20.**

LIST OF VOTERS

In order to ensure that all eligible voters 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 that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969)**. Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994)**. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision 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 by July 26, 2002.

DATED at Cleveland, Ohio this 12th day of July 2002.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

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