

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**MILLENNIUM MILLWORK
CORPORATION¹**

Employer

and

CASE 22-RC-12349

**LOCAL 813, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

1. Introduction

The Petitioner seeks to represent a unit of drivers employed by the Employer. The Employer contends that the only appropriate unit for purposes of collective bargaining would include its loaders with its drivers. The Employer would also include among the drivers Michael Coyne, a driver who resides in Massachusetts and performs deliveries for the Employer in the New England area. The Petitioner takes no position as to the inclusion of Coyne in the unit. There is no history of collective bargaining for any of the employees involved herein. I find, for the reasons described below, that a

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

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

unit of drivers is appropriate and I will direct an election in such unit. Additionally, I find that it would be appropriate to include Michael Coyne in the unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,³ I find:

1. The hearing officer's rulings 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.⁴

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

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described below:

All drivers employed by the Employer who deliver products dispatched by the Employer from its Edison, New Jersey facility, excluding all office clerical employees, professional employees, production and warehouse employees, loaders, guards and supervisors as defined in the Act, and all other employees.

³ Briefs filed by the Employer and the Petitioner were fully considered.

⁴ The Employer is engaged in the fabrication and distribution of wood doors and windows from its Edison, New Jersey facility, the only facility involved herein.

2. **Facts**

(a) **The Drivers Unit Issue**

In the operation of its business from its Edison, New Jersey facility, the Employer employs approximately 14 drivers, 7 loaders, 30 production employees, 6 warehouse employees, 4 clerical employees and an unspecified number of salespersons. The Employer distributes doors it manufactures as well as windows and some doors manufactured by others. Drivers deliver these products to lumberyards. In making deliveries, the drivers operate either one of the Employer's 20 straight trucks or one of its 4 tractors, which move its 7 or 8 trailers.

Drivers are employed in the Employer's shipping department, a separate area of the warehouse. Also working in that department are the Employer's loaders. Supervising the drivers and loaders in the department are Shipping Department Supervisor Steve Rodrick and Dispatcher Allan Browning.⁵

Drivers report to work at various times in the morning. In this regard, one driver begins work at about 2:30 a.m., 2 or 3 drivers begin at about 3:30 or 4:00 a.m. and the remaining drivers begin at about 6:00 a.m. After performing safety inspections of their vehicles, which have already been loaded by the Employer's loaders, the drivers leave to make deliveries. Because they are on the road and away from the Employer's facility about 95 per cent of their time, drivers are provided with cell phones to keep in contact. The drivers do not return to the facility with their vehicles until sometime between noon and 6:00 p.m., depending on the time that they left the

⁵ The parties stipulated that these individuals are statutory supervisors and I shall, therefore, exclude them from the unit found appropriate herein.

Employer's facility and the nature and extent of their deliveries. Before ending their shifts, drivers turn in their paperwork and off-load returns or damaged products, if any, on the loading dock.

The Employer's loaders work at the Edison facility from about 4:00 p.m. until 12:30 a.m. They are responsible for removing orders placed on carts in the dock area and loading them into the Employer's vehicles so that they will be ready to be delivered. The orders are loaded in reverse order of delivery. In addition to loading the Employer's vehicles, the loaders also move vehicles, as necessary, between the parking lot and the loading bays. The loaders also will normally assist the drivers in off-loading any returns from their vehicles, if the drivers return when the loaders are there. The record reflects that the process of off-loading a vehicle normally takes between 15 minutes and a half hour.

The Employer' production and warehouse employees work from about 6 or 7 a.m. to about 3 or 4 p.m. Both groups of employees work overtime hours, as necessary, and on occasion they may stay as late as 7 or 8 p.m. In preparing products for delivery, the production employees move the manufactured products from the production area to the loading area while the warehouse employees move other products from the warehouse area there. The record reflects that the production and warehouse employees normally do not have contact with the drivers while they may have contact with the loaders, depending on when their shifts end. Typically, on "heavy days," the loaders will come into contact with production and warehouse employees who are still working at the facility when they arrive.

The record reflects that nearly all of the Employer's drivers are required to have commercial driver's licenses (CDLs) to operate vehicles. Tractor-trailer drivers must have CDL Class A licenses while drivers of straight trucks above a certain weight are required to have CDL Class B licenses. Only about 2 of the Employer's vehicles do not require a CDL license to be operated and only about one or two of the Employer's drivers do not possess CDL licenses. None of the loaders are required to have CDL licenses for the performance of their work and there is no evidence that any of them have such licenses. Drivers maintain their licenses and are subject to discipline if they accumulate moving violations. Over the road drivers are also subject to Department of Transportation regulations, including maintaining logs of their driving activities. All drivers are required to wear uniforms which are not required of any of the Employer's other employees.

The average pay earned by drivers is \$14.11 per hour, while loaders earn an average of \$10.97 per hour. All employees working at the Edison facility have access to and utilize a common lunchroom. The drivers, however, who are on the road, normally do not eat in the lunchroom. All employees are subject to the same vacation, sick leave, bereavement leave, holiday, jury duty, military leave, maternity and adoption leave policies. They also can choose to participate in the same Employer health benefit and 401(k) savings plans.

The record reflects that no loaders have become drivers, or visa versa. While there is some evidence that in the past, one or two drivers may have filled-in in for an absent loader, such occurrences are very rare. Further, there is no evidence of any loader filling in for an absent driver.

(b) **The Inclusion of Michael Coyne in the Unit**

The record reflects that like other drivers, Michael Coyne, who resides in Massachusetts, delivers products for the Employer. However, he does not pick up products at the Employer's facility in Edison, but rather picks up a loaded trailer that another driver, coming from Edison, drops off for him at a location in Rhode Island. The driver from Edison will then take back Coyne's empty trailer. The procedure of dropping off a trailer and hooking up a different tractor is called a "drop and hook." Coyne regularly meets and interacts with the other driver making the drop-off. The "drop and hooks" occur sometime between around 6:00 a.m. and 6:30 a.m. three days a week, with the procedure taking between about 20 minutes to a half hour. Coyne is not the only driver who makes deliveries for the Employer in the New England area. Another driver leaves Edison a couple of times a week with a straight truck and makes deliveries there, returning the same day or sleeping over, if necessary.

Coyne delivers the same type of product, is compensated in the same manner, receives the same benefits, wears the same type of uniform and is subject to the same requirements as the Employer's other drivers. He is also on the same payroll as all other employees. Besides Coyne, the Employer does not employ any other employees who work from a remote location.

3. Analysis

(a) **Driver Unit Determination**

The Board, aware of the complex nature of modern industry, has rejected the application of any fixed rule for the unit placement of drivers and has applied a case-by-case analysis in this area. *E. H. Koester Bakery Co., Inc.*, 136 NLRB 1006 (1962).

In *Marks Oxygen Co.*, 147 NLRB 228 (1964), the Board further clarified its *Koester* policy by deciding that when considering the unit placement of drivers, it would take into account other basic policies such as 1] the Petitioner's desire as to the unit is always a relevant consideration and 2] it is not essential that a unit be the most appropriate unit. Finally, in *Mc-Mor-Han Trucking Co.*, 166 NLRB 700 (1967), the Board found that the facts there did not reveal such a community of interest between drivers and other employees as would render a proposed drivers unit inappropriate. See also *Home Depot USA, Inc.*, 331 NLRB 1289 (2000); *Overnite Transportation Co.*, 331 NLRB 662 (2000); *Pacemaker Mobile Homes, a Division of Lonergan Corp.*, 194 NLRB 742 (1971).

In the instant matter, I note that the unit sought is composed of employees who perform a separate function and possess special skills and qualifications not possessed by the Employer's other employees. They also primarily perform work away from the facility and have minimal work related contact with the loaders, or any significant interchange with them. Further, they are paid more than the loaders and wear distinct uniforms. I also note that no other labor organization seeks to represent the drivers in a more comprehensive unit and that there is no evidence that there is such a community of interest between the drivers and the loaders that would render a proposed drivers unit inappropriate. Accordingly, I find that the unit sought by the Petitioner constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act. *Mc-Mor-Han Trucking Co.*, supra; *Overnite Transportation Co.*, 325 NLRB 612 (1998). In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine an appropriate unit. *P.J.*

Dick Contracting, 290 NLRB 150 (1988). In so doing, the Board looks “first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals.” *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). In making this finding I reject the Employer’s argument that because the loaders and drivers work in the same department, are both involved with the distribution of the Employer’s products, have common supervision and have some work-related contact, a functional integration between them exists which makes a unit limited to drivers inappropriate. Rather, I find that these factors are substantially outweighed by the factors supporting a conclusion that the drivers constitute a distinct group with a distinct community of interest and constitute an appropriate unit as described above. *Home Depot USA, Inc.*, supra. Cases cited by the Employer such as *Transway, Inc.* 153 NLRB 885 (1965); *Calco Plating, Inc.*, 242 NLRB 1364 (1979); and *Levitz Furniture Co. of Santa Clara, Inc.*, 192 NLRB 61 (1971) are distinguishable because in those cases the drivers and other employees had substantial and frequent contact with each other and, in some instances, even performed the same functions.

(b) Michael Coyne

There remains for consideration whether Michael Coyne should be included in the unit found appropriate herein. Based on the above and the record as a whole, noting in particular that he performs driver functions similar to those performed by all of the Employer’s other drivers and is subject to the same privileges and obligations as they are, and that were he to be excluded he would effectively be denied the opportunity to be represented, I find that Coyne should be included in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 813, International Brotherhood of Teamsters, AFL-CIO.**

LIST OF VOTERS

In order to ensure 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 in 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 within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, Veterans Administration Building, 20 Washington Place, 5th Floor, Newark, New Jersey 07102, on or before **July 22, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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, DC 20570-0001. This request must be received by the Board in Washington by **July 29, 2003**.

Signed at Newark, New Jersey this 15th day of July 2003.

Bernard Suskewicz
Acting Regional Director
NLRB Region 22
Veterans Administration Building
20 Washington Place, 5th Floor
Newark, New Jersey 07102

440-1760-6200