

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

AMERICAN ROLLER COMPANY, LLC¹
Employer

and

Case 25-RC-10172

TEAMSTERS LOCAL UNION
NO. 364, a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
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 March 25, 2003, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. ISSUES

Teamsters Local Union No. 364, a/w International Brotherhood of Teamsters (the "Petitioner") seeks an election within a unit comprised of all production and maintenance employees employed by American Roller Company, LLC (the "Employer") at its Walkerton, Indiana, facility. The Petitioner contends that these employees comprise an appropriate

¹ The Employer's name appears as stipulated by the parties at hearing.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. 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.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. 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.

bargaining unit. The Employer, however, maintains that the only appropriate unit is one which includes both production/maintenance employees and its delivery employees.³

II. DECISION

For the reasons discussed in detail below, including the delivery employees' lack of a compelling community of interest with production and maintenance employees, it is concluded that the Employer's production and maintenance employees, absent delivery drivers, constitute an appropriate unit for purposes of collective bargaining.

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:

All full-time and regular part-time production and maintenance employees⁴ employed by the Employer at its Walkerton, Indiana, facility; BUT EXCLUDING all delivery employees, all office clerical employees, all professional employees, all guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 42 employees for whom no history of collective bargaining exists.⁵

III. STATEMENT OF FACTS

A. Overview

The Employer is engaged in the manufacture and refurbishing of rollers used by various industries in their manufacturing processes, including the steel industry, plastics, the printing industry, the business machine and office products industry, and the packaging industry. The Employer operates facilities in several states, including the one at issue here, located in

³ The Employer's "Delivery" job classification is also referred to herein as "over-the-road driver" or "road driver."

⁴ There is no dispute that the following classifications are included in this unit: Booker, Building, Core Prep, Finishing (Large Group), Finishing (Small Group), Fixturing, Kettle Mixing, Maintenance, Shipping/Receiving, Stripping, and Wrapper.

⁵ There was some evidence presented at the hearing that a Chicago, Illinois, facility which was apparently the predecessor to the Walkerton, Indiana, facility was organized by a local union affiliated with the International Brotherhood of Teamsters. However, the Chicago facility closed more than 20 years ago and there has been no history of collective bargaining at the Walkerton facility since it was opened.

Walkerton, Indiana. The Walkerton facility is primarily involved in the repair and recoating of rubber and urethane rollers. These rollers vary substantially in size; a small roller may weigh as little as 20 pounds, while large ones may weigh several thousand pounds. The highest-ranking representative of management at the Walkerton facility is its Plant Manager. He is responsible for all operations at the facility. Regularly scheduled production and maintenance shifts extend from 7:00 AM to 3:00 PM (first shift), 3:00 PM to 11:00 PM for second shift, and 11:00 PM to 7:00 AM for third shift. Overall supervision of each shift rests with the Production Supervisor assigned to the shift. Additional supervisors such as the Plant Manager, Shipping/Receiving Supervisor, and Manufacturing Engineer work on first shift. A Customer Service Supervisor who reports to individuals located at the Employer's corporate headquarters (located in Union Grove, Wisconsin), supervises those production employees entitled "Bookers." In addition to their direct supervisor, employees who report for work prior to the time their shift is regularly scheduled to commence,⁶ are also indirectly supervised by the Production Supervisor in charge of the shift.

All of the employees at the facility are governed by a common employee handbook and the same personnel policies, including those governing absenteeism, solicitation, and leaves of absence. All employees receive the same fringe benefits such as health insurance, paid holidays, paid vacations, and a 401(k) plan. Several of the employees' terms of employment such as their pay rates and fringe benefits, are established by the Employer's corporate office. All of the employees are covered by a plant-wide seniority system, which applies to such matters as job bidding and layoffs.

B. The Production Process

The production process begins with the arrival of a customer's roller. Incoming rollers are either delivered to the facility by the Employer's truck drivers or by common carriers. Shipping/receiving employees unload the trucks, occasionally with help from a road driver, a booker, or core prep employees. A shipping/receiving employee then transports the roller to the booker's area, where the booker confirms the roller's delivery, and enters the work to be performed on the roller into the Employer's computerized production system. A shipping/receiving employee then transports the roller to a warehouse area where it is staged until the Employer is ready to begin its repair/restoration.

The facility refurbishes 30 to 40 rollers per day. The refurbishing process begins with stripping employees who remove existing rubber or urethane coatings from the rollers. Core Prep employees assemble (and later reassemble) the cores of rollers; prepare them for a molding process; and place the cores into an oven. Kettle mixing employees combine chemicals which produce liquid urethane which is poured into core molds. Building employees apply the molded rubber or urethane to the repaired metal cores. After the molding and building process is

⁶ This would include employees such as certain casting employees who begin work prior to 7:00 AM, and shipping/receiving clerks who work on second and third shifts.

completed, finishing employees grind and finish the rollers to customers' specifications.⁷ Following completion of the production process, a shipping/receiving employee packs the finished roller into a box and transports it to a warehouse area to await shipment

There are currently four shipping/receiving employees at the Walkerton facility: two who work on first shift and one each on second and third shifts. The primary duties of shipping/receiving employees include unloading rollers from incoming trucks, loading finished rollers onto the Employer's trucks, moving the rollers to areas within the production facility, and providing raw materials to production areas. Rollers and materials are transported throughout the plant using forklifts, and shipping/receiving employees are in regular contact with many of the Employer's production and maintenance employees. In addition, shipping/receiving employees periodically deliver rollers to customers located generally within a 100-mile radius of the facility.⁸ The Employer uses two kinds of trucks: one flatbed and six tractor trailers.⁹ Local deliveries and pickups are made with the flatbed driven either by the two shipping/receiving employees who work the first shift, or by the over-the-road drivers. The shipping/receiving employees on first shift who drive the flatbed are required to have a Class B commercial drivers license ("CDL").¹⁰ Employees performing Class B driving receive no additional compensation for the time spent driving.¹¹ When the day shift shipping/receiving employees perform driving duties, they are required to wear an Employer-provided shirt and jacket which bears their name and the Company's name, because they are interacting with customers and the public. Otherwise, they, like other production/maintenance employees, can chose to purchase uniforms from the Employer (different than those worn when driving), but are not required to do so. Both the shipping/receiving employees and road drivers are supervised by a Shipping and Receiving Supervisor.

Employees directly involved in the production process earn hourly wages which range between \$10.36 and \$13.89 per hour. Maintenance mechanics, who repair the facility's equipment and machinery, are the highest paid hourly employees at the facility. They earn

⁷ The only difference between "large group" finishing employees and "small group" employees is the size of the rollers on which they work. As their name connotes, the large group employees refurbish larger rollers.

⁸ The record indicates, however, that most "local" deliveries are located within 30 miles of the plant.

⁹ These trucks are leased from a supplier whose mechanics maintain and repair them.

¹⁰ One of the two day shift shipping/receiving employees, Ricky Lawson, discussed in more detail below, happens to have a Class A CDL, which permits him to perform Class B driving as well as driving tractor-trailers.

¹¹ According to testimonial evidence, if a shipping/receiving employees is assigned a dispatch which requires overnight lodging, he receives \$.50 per hour in addition to his hourly wage. However, the witnesses could not recall any example of when this may have occurred.

between \$13.25 and \$15.98 per hour. In addition to their hourly rate, employees who work on the second and third shifts also receive a shift differential of an undisclosed amount. An unknown number of lead persons are also involved in the production process, although the record does not disclose information about their functions. Lead persons earn a wage 10% greater than other production employees within their respective work areas. Neither party, however, asserts that lead persons are statutory supervisors. Shipping/receiving employees earn an hourly wage within the same range as other production employees, with those employed on second and third shift receiving a shift differential.

C. The Delivery Drivers

Deliveries which require overnight lodging are made by the Employer's six delivery drivers who drive its six tractor trailers. These over-the-road drivers transport rollers to and from customers located within a five-state area. Delivery employees occasionally assist in loading their trucks and spend perhaps 1-2% of their time performing other duties in the facility such as delivering materials to production areas with a forklift. These incidental duties are performed as time permits (such as when a driver arrives to work before his truck is fully loaded or finishes a dispatch earlier than anticipated). The road drivers spend approximately 80% of their time away from the facility, delivering and picking up product and materials. When they are at the facility, a substantial portion of their time is spent completing paperwork and driving logs mandated by the Department of Transportation. The delivery employees are supervised by the Shipping and Receiving Supervisor.

Delivery employees are required to possess a Class A CDL, which permits them to drive both Class B vehicles such as the flatbed truck, as well as tractor-trailers. With a Class A CDL, the delivery employees are required to comply with Department of Transportation regulations whenever they are driving, including the completion of driving logs and passing a medical examination. Delivery employees earn a minimum starting wage rate of \$11.71 with a maximum rate of \$14.44. When performing Class A driving, the drivers receive an additional \$1.25 per hour. The drivers' work hours are determined from the time the driver clocks into the facility until the time he is required to stop driving by the Department of Transportation regulations. His work time resumes when he resumes driving the next day, and ends when he arrives at the facility and clocks out. Road drivers regularly perform overnight dispatches and when on the road overnight, they receive a per diem for their meals, as well as lodging expenses in addition to their hourly wage and driving differential. Drivers are provided with cellular phones and are required to wear Employer-provided uniforms when on the road and meeting with customers. Delivery employees also occasionally perform Class B driving duties, making local runs. The record indicates that one driver may make a delivery or two each week. Road drivers customarily perform local dispatches when their overnight dispatches permit, or if they are requested to do so by management on a scheduled day off.

During the past five years, three of the six road drivers voluntarily transferred from production positions, while the other three drivers were hired off the street. Only one road driver has apparently transferred into a production position during the facility's 23-year history, however. According to the current Shipping and Receiving Supervisor, he transferred from a driver position to the lead person position in shipping/receiving, and eventually was promoted to

his present position. The record does not indicate that any other truck driver has transferred to a production or maintenance position.

Two production employees possess Class A CDL's, although not at the Employer's request or requirement. One employee is classified as a "Builder." During the year preceding the hearing herein, he was asked to complete one overnight dispatch on an emergency basis when no other road driver was available. The other employee works the day shift in shipping/receiving and is assigned to perform road driving as a substitute for absent drivers. According to testimonial evidence, this shipping employee is currently assigned to make a delivery to customers in St. Louis, Missouri every other week, apparently in the absence of a road driver who is on sick leave. This shipping employee typically performs the majority of his road driving during the summer months when he substitutes in the absence of drivers on vacation.

IV. DISCUSSION

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act." NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting and it need not choose the most appropriate unit. American Hospital Assn. v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988).

The Board begins its analysis with an examination of the petitioned unit, and if that unit is found appropriate, then "the inquiry into the appropriate unit ends." Overnight Transportation Co., 331 NLRB 662, 663 (2000); The Boeing Company, 337 NLRB No. 24 (December 20, 2001).

In determining whether a group of employees constitutes an appropriate unit, the ultimate question is whether the employees share a sufficient community of interest to warrant their joinder within one unit. Alois Box Co, Inc., 326 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994). To assess whether employees share such a community of interest, the Board weighs a variety of factors, including similarities in wages or method of compensation; similar hours of work; similar employment benefits; similar supervision; the degree of similar or dissimilar qualifications, training, and skills; similarities in job functions; the amount of working time spent at or away from the facility; the integration of work functions; the degree of interchange between employees as well as the degree of employee contact; and the history of bargaining. Action Automotive, *Supra*, at 494-97; Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

A. Production and Maintenance Employees

The Petitioner seeks a bargaining unit comprised of all production and maintenance employees, including shipping and receiving employees. The Employer asserts that only a wall-

to-wall unit comprised of production, maintenance and truck driving employees is appropriate. Absent a bargaining history in a more comprehensive unit or functional integration of a degree sufficient to obliterate separate identity, a production and maintenance unit normally constitutes an appropriate unit for collective bargaining. Chin Industries, 232 NLRB 176, 177 (1977); PECO Energy Company, 322 NLRB 1074, 1081, n. 2 (1997). The evidence in the case at hand reinforces this presumption. Production and maintenance employees perform functions integrally related to one other; experience daily contact with each other; share common supervisors,¹² work the same hours; earn comparable wages; are eligible to receive the same fringe benefits; and are subject to the same personnel policies and rules. Accordingly, it is concluded that production and maintenance employees employed at the Employer's Walkerton, Indiana facility constitute an appropriate bargaining unit.

B. The Delivery Employees

Nor does the record indicate that the Employer's delivery drivers share such a close community of interest with production and maintenance employees to require their joinder within the same unit. The work performed and skills possessed by drivers differ from virtually all production and maintenance employees. Delivery drivers are required to possess a Class A CDL, which none of the other employees at the Employer are required to maintain. Only two shipping/receiving employees also perform driving functions. Thus, the delivery drivers perform functions different from those performed by 40 out of the 42 production and maintenance employees. While driving duties take two shipping employees away from the plant on an occasional basis, the road drivers are gone from the plant 80% or more of their work time. The functions they perform at the plant, such as completing daily logs and other paper work, are primarily related to their driving duties. Production work performed by the drivers, such as loading or unloading trucks, is incidental to their driving duties and only occasionally performed. The extent of contact with production employees is minimal. Road drivers are the second highest paid group of employees at the facility, and receive a different form of remuneration than that of unit members. The drivers also work different hours than members of the petitioned unit, and while most of the employees at the plant are currently averaging 40 hours of work per week or less, the delivery employees often work overtime. At present at least three of the delivery drivers are averaging 50-55 hours per week. Interchange between the drivers and production unit has been limited. Thus, while three production employees have transferred to permanent road driving positions within the past five years, during the 23-year history of the facility, the record reflects only one road driver having permanently transferred to a production position.

Although the delivery employees share a common supervisor with the four shipping and receiving employees, they share no common supervision with the 38 remaining members of the petitioned unit. This limited common supervision does not create such a strong community of interest with bargaining unit to compel the inclusion of the drivers in the unit.

¹² The Shift Production Supervisors oversee production employees; the Manufacturing Engineer, maintenance employees; the Shipping and Receiving Supervisor, Shipping/Receiving employees; and a Customer Service Supervisor, the Bookers .

Thus, it is concluded that the delivery employees employed at the Walkerton facility do not share a sufficient community of interest with production and maintenance employees to require their joinder within the same unit. Overnite Transportation Co., *Supra*; E.H. Koester Bakery Co., 136 NLRB 1006 (1962).

Cases cited by the Employer are legally and factually distinguishable from the case at hand. The Employer relies upon Kalamazoo Paper Box Corp., 136 NLRB 134 (1962). However, that case involved a union attempting to sever truck drivers from an existing unit and thus the petitioner had to show "a substantial difference in interests and working conditions . . . which outweighs their admitted community of interest." Further, the driving duties of the employees at issue there amounted "to little more than 50 percent of their time," with the remainder spent working with various parts of production throughout the facility. Here, there exists no previous history of collective bargaining at the Walkerton facility and the delivery employees, unlike those in Kalamazoo Paper Box, spend approximately 80% of their time away from the facility on the road. Even the remaining 20% of time spent at the facility includes finishing paperwork and driving logs which are not otherwise associated with the production process.

In other cases cited by the Employer, such as Standard Oil Co., 147 NLRB 1226 (1964), there existed a much greater degree of interchange between various job classifications than exists in the present case. In Standard Oil several of the non-driving classifications performed driving duties and drivers performing the duties of several of the non-driving classifications. Similarly, the drivers in Typecraft Press, Inc., 275 NLRB 553 (1985), spent at most 60% of their time driving, with the rest of their time spent performing various production duties throughout the plant alongside production and maintenance employees. Such does not occur in the present case. The truck drivers in Calco Plating, Inc., 242 NLRB 1364 (1979), also cited by the Employer, spent as much as 50% of their time performing duties at the plant such as wrapping the finished product and assisting the stockman in pulling inventory. Calco is also distinguishable by the fact that more than 10% of the production employees in that case also performed truck driving duties, while less than 5% of unit members perform driving functions in the present case. Also significant is the fact that unlike Calco, the Employer's drivers do not earn wages similar to production employees.

C. The Dual-Function Employee

A dual function employee is one who performs the duties of two or more positions for the same employer. It is not necessary that the dual function employee spend more than 50% of his time performing unit work in order to warrant his inclusion within a bargaining unit. It is sufficient if the dual function employee regularly performs duties similar to those performed by unit members, for sufficient periods of time to create a community of interest with them. Martin Enterprises, Inc., 325 NLRB No. 133 (April 30, 1998). Currently, there is one shipping/receiving employee, Ricky Lawson, who has a Class A CDL license and who performs over-the-road driving. This Class A license was not required by the Employer but was obtained by Lawson on his own accord. Although the frequency and extent to which Lawson performs overnight driving cannot be quantified from the record, he is currently performing such work on a relatively regular basis (apparently in substitution for a road driver who is absent on sick

leave), and during the summer months when he substitutes for road drivers who are on vacation. Testimonial evidence estimated that Lawson is currently spending 20% to 50% of his time performing over-the-road driving, while the remainder of Lawson's time is spent performing other traditional shipping/receiving work, including loading and unloading trucks.¹³

Since Lawson regularly performs shipping and receiving functions, despite his status as a dual-function employee, his inclusion in the production and maintenance unit is appropriate. He is, therefore, included in the unit. Medlar Electric, Inc., 337 NLRB No. 133 (July 18, 2002).

V. 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 be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding 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 any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit 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 the Teamsters Local Union No. 364, a/w International Brotherhood of Teamsters.

VI. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the

¹³ These figures are only estimates and no records were produced to establish with certainty the extent of road driving historically and currently performed by Lawson. In addition, neither party called Lawson as a witness.

day of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. LIST OF VOTERS

To insure 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 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 directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **April 17, 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. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. 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. This request must be received by the Board in Washington by April 24, 2003.

DATED at Indianapolis, Indiana, this 10th day of April, 2003.

/s/ Roberto G. Chavarry

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