

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

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**WAYNE FARMS LLC<sup>1</sup>  
Employer**

**and**

**RETAIL, WHOLESALE DEPARTMENT  
STORE UNION, AFL-CIO, CLC  
Petitioner**

**Case No. 15-RC-8529**

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**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.

The Petitioner seeks to represent a unit of all production and maintenance employees, and dispatchers; excluding office clerical, guards, truck drivers and supervisors as defined in the Act. The production employees consists of three (3) employees classified as pellet mill operators, two (2) employees classified as utility personnel, and one (1) employee classified as a general laborer. There are two (2) employees classified as maintenance personnel and three (3) employees classified as dispatchers. Hence, the petitioned-for unit consists of eleven (11) employees.

Although the parties are essentially in accord with both the scope and composition

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

of the unit, the Employer disputes the exclusion of truck drivers from the unit. There are seven (7) employees classified as feed delivery truck drivers. The Employer contends that the truck drivers have a substantial community of interest with the petitioned-for unit and therefore should be included in the bargaining unit. The Petitioner contends that the truck drivers do not have a substantial community of interest with the petitioned-for unit and therefore should be excluded from the bargaining unit.

I have considered the evidence and arguments presented by the parties on this issue. As discussed below, I have concluded that the petitioned-for unit is an appropriate unit and that the evidence does not support a finding that the truck drivers share such a close community of interest with the petitioned-for unit as would mandate their inclusion in the petitioned-for unit.

## **I. OVERVIEW OF OPERATIONS**

At the facility involved herein, the Employer produces feed for delivery to chicken farmers serviced by the Employer. The primary job of the utility personnel is to unload from trucks and/or trains the ingredients used to make the feed. The dispatchers and pellet mill operators are responsible for making the feed and loading the feed into the delivery trucks. After the truck drivers' supervisor determines who needs feed and in what amount, the supervisor loads the information into the computer. The dispatcher then instructs the drivers on where to deliver the feed. In order to load a truck with feed, the truck driver maneuvers the truck under a feed bin; whereupon, the dispatcher opens the feed bin to allow the feed to flow into the truck. Sometimes, the feed will get lodged in the bin. When this happens, the dispatcher, pellet mill operator or truck driver will use a hammer to tap the bin until the feed is dislodged. After the truck is loaded, the truck driver transports the feed to the farmer. There is one truck driver whose duties also include retrieving unused feed from the farmers and returning it to the facility.

The general laborer performs general cleaning of the facility and assists the maintenance and other production employees at the facility as needed. The maintenance employees are responsible for keeping all of the equipment at the facility functioning.

## **II. OVERVIEW OF THE LAW**

It is well established that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. See, e.g., **General Instrument Corp. v. NLRB**, 319 F.2d 420, 422-423 (4th Cir. 1963), cert. denied 375 U.S. 966 (1964); **Mountain States Telephone Co. v. NLRB**, 310 F.2d 478, 480 (10th Cir. 1962). In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. **P.J. Dick Contracting**, 290 NLRB 150, 151 (1988). The Board, however, does not compel a petitioner to seek any particular appropriate unit. **P.J. Dick Contracting** supra at 151. The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. **Black & Decker Mfg. Co.**, 147 NLRB 825, 828 (1964).

In deciding whether a petitioned-for unit is "appropriate" under Section 9(b), "[t]he Board's discretion in this area is broad, reflecting Congress' recognition 'of the need for flexibility in shaping the [bargaining] unit to the particular case.' " **NLRB v. Action Automotive**, 469 U.S. 490, 494 (1985) (quoting **NLRB v. Hearst Publications, Inc.**, 322 U.S. 111, 134 (1944)). In defining the appropriate bargaining unit, the Board's focus is on whether the employees share a "community of interest." **NLRB v. Action Automotive**, supra at 494. In arriving at an appropriate unit determination, the Board weighs various community-of-interest factors, including the following: A difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent

away from the employment or plant situs ... the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. **Kalamazoo Paper Box Corp.**, 136 NLRB 134, 137 (1962); **Banknote Corp. of America v. NLRB**, 84 F.3d 637, 647-648 (2d Cir. 1996).

In cases involving inclusion-exclusion of truck drivers, the Board recognizes that there may be some factors supporting their exclusion from an overall production and maintenance unit and some factors supporting their inclusion in the unit. The Board in **Lonergan Corp.**, 194 NLRB 742, 743 (1972) noted that in such a situation "...where no other labor organization is seeking a unit larger or smaller than the unit requested by the Petitioner, the sole issue to be determined is whether or not the unit requested by the Petitioner is an appropriate unit."

In this matter, there is no other labor organization seeking a unit larger or smaller than the unit requested by the Petitioner.

### **III. COMMUNITY OF INTEREST**

#### **A. WAGES AND COMPENSATION**

The truck drivers are paid by miles driven and the load; whereas, the employees in the petitioned-for unit are paid hourly. While the employees in the petitioned-for unit may receive overtime, the truck drivers do not receive overtime but they do receive more money per mile and load after their fourth load. The truck drivers may receive a quarterly safety bonus of \$225.00, the employees in the petitioned-for unit do not receive a safety bonus.

#### **B. HOURS OF WORK**

The truck drivers work a twelve (12) hour shift and are scheduled to work from 5:00 a.m. to 5:00 p.m. and from 5:00 p.m. to 5:00 a.m. The production employees and dispatchers are scheduled to work from 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., or 11:00 p.m. to 7:00 a.m. Some production employees report to work at 5:00 a.m. on Mondays to load the feed

trucks. The maintenance employees' work staggered shifts and can be called in anytime day or night. The record does not contain any information as to the starting and ending times of the staggered shifts.

### **C. EMPLOYMENT BENEFITS**

The truck drivers and the employees of in the petitioned-for unit have the same benefits packages.<sup>2</sup>

### **D. SEPARATE SUPERVISION**

The truck drivers' immediate supervisor is the traffic supervisor. The dispatchers, general laborer, utility, and maintenance employees' immediate supervisor is the mill superintendent. The pellet mill operators' immediate supervisor is the quality assurance supervisor. On a rotating basis, one of the supervisors may take off early on a Friday and/or take the entire Friday off.<sup>3</sup> When a supervisor leaves early or takes a Friday off, one of the remaining supervisors assumes the responsibilities of the absent supervisor. As such, there have been occasions when the traffic supervisor performed the duties of the mill superintendent and vice versa. The record is silent as to how often this happens and as to how often the quality assurance supervisor has performed the duties of the traffic supervisor and vice versa.

When the traffic supervisor is on vacation, a dispatcher assumes the traffic supervisor's duties of scheduling feed for delivery. In this role, the dispatcher does not exercise any supervisory authority. The mill manager testified that if any supervisory issues arise during the dispatcher's temporary assumption of the traffic supervisor's duties, the dispatcher would seek assistance from the mill superintendent. The record is silent as to how often and for how long the traffic supervisor takes a vacation, what is classified as supervisory issues, and as to what

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<sup>2</sup> The record does not set forth the details of the employees' benefits package.

would be the mill superintendent's responsibilities upon being informed of these supervisory issues.

#### **E. QUALIFICATIONS, TRAINING AND SKILLS**

All the truck drivers are required to have a commercial drivers license. Besides the truck drivers, employee Danny Thompson, who is currently assigned to maintenance, is the only other employee who has a commercial drivers license. The record does not contain an explanation as to circumstances for Thompson's possession of a commercial drivers license.

The truck drivers attend an annual Department of Transportation, hereinafter DOT, meeting. Thompson is the only petitioned-for unit employee who attends the DOT meeting.

#### **F. TIME SPENT AT THE FACILITY**

The truck drivers spend approximately ten (10) hours of their twelve (12) hour shift away from the facility delivering feed. On the other hand, all the employees in the petitioned-for unit work at the facility.

#### **G. TRUCK DRIVERS CONTACT WITH PETITIONED-FOR UNIT EMPLOYEES**

The truck drivers and the employees in the petitioned-for-unit enter the facility at the same location, clock in at the same time clock, attend the same company sponsored picnics, attend the same quarterly safety meetings, and their personnel records are maintained by the same individual in a central location. They also share a common break room; however, the truck drivers have the prerogative to take their lunch and other breaks at local establishments they pass while they are on the road delivering feed.

On occasion a truck driver will get out of his truck to help the dispatcher and/or pellet mill operator dislodge feed from the feed bin. Once the truck is loaded, the dispatcher instructs

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<sup>3</sup> In its Post Hearing Brief, the Employer states the testimony established that supervisors are absent practically every Friday. However, the mill manager testified that Friday's are usually light days and that a supervisor may

the truck driver as to which farm to deliver the feed. The truck drivers have a radio in their truck. The dispatchers have a radio which can be used to contact the truck drivers. The record is silent as to how often, during the course of a workday, the truck drivers and dispatchers talk with each other via the radios.

#### **H. INTEGRATION OR INTERCHANGE OF WORK FUNCTION**

The mill manager testified that maintenance employee Thompson fills in for the truck drivers on occasion and sometimes volunteers to take weekend call duty.<sup>4</sup> The record is silent as to how often Thompson fills in for the other drivers and as to how often he volunteers for weekend call duty.

The mill manager testified that from time to time the truck drivers volunteer to help with facility maintenance. No details are contained in the record as to the type of maintenance work performed, how often the truck drivers perform maintenance duties and when was the last time a truck driver performed maintenance duties. The mill manager also testified that from time to time the maintenance employees perform light maintenance work on the trucks. The record is silent as to the type of light maintenance work performed, how often the maintenance employees perform maintenance on the trucks, and when was the last time a maintenance employee performed maintenance on a truck.

The mill manager testified that when a truck driver is placed on light duty due to an illness and/or injury and is not authorized to drive his truck, that the truck driver is temporarily assigned to work in the mill to assist the dispatchers. The mill manager testified that he specifically recalls that within the last two (2) years, two (2) truck drivers were placed on light

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take off but did not testify that the supervisors take off practically every Friday.

<sup>4</sup> During weekend call duty, a truck driver is given a pager and is responsible for hauling feed to a farm if the farm runs out of feed during the weekend.

duty working in the mill. The mill manager also testified that when one of the truck drivers had surgery and could drive but could not bend, stoop or perform heavy lifting, that employee Jasper Hill, a general laborer, traveled with the truck driver to assist the truck driver.

### **I. HISTORY OF BARGAINING**

The Employer's human resources manager for the southern region testified that he oversees the human resources responsibilities for the Enterprise and Troy, Alabama facilities. He also testified that mill operations for the two facilities seem to be extremely similar to him. He presented evidence, that for approximately twenty (20) years, the Petitioner has been the exclusive bargaining representative of all production, maintenance and truck drivers at the Troy, Alabama facility. However, the Employer did not present any evidence regarding how the truck drivers' duties at the Troy, Alabama facility are similar to the truck drivers' duties at the Enterprise, Alabama facility. Likewise, the Employer did not present any evidence regarding how the community of interest between the bargaining unit at the Troy, Alabama is similar to the level of community of interest between the truck drivers and the petitioned-for unit at issue herein.

### **IV. ANALYSIS**

I find that the employees in the petitioned-for-unit is an appropriate unit and that the evidence does not support a finding that the truck drivers share such a close community of interest with the employees in the petitioned-for unit as would mandate their inclusion in the petitioned-for unit. In concluding that a unit excluding the truck drivers is an appropriate unit, I note that the truck drivers share some community of interest factors with the employees in the petitioned-for unit, in that they clock in at the same time clock, attend the same quarterly safety meetings, enter the facility at the same location, attend the same company sponsored picnics, share a common break room, share the same benefits package, sometimes assist each other in

work, that the dispatchers instruct the truck drivers as to which farm to deliver the feed, and that one employee in the petitioned-for unit has a commercial drivers license and sometimes performs truck driving work.<sup>5</sup>

However, a number of factors weigh against mandating that the truck drivers be included in the petitioned-for unit. Initially, I note that all the employees in the petitioned-for unit regularly spend their workday at the Employer's facility, while the truck drivers spend ten (10) of their twelve (12) working hours away from the plant. See **Chin Industries, Inc.**, 232 NLRB 176 (1977) (excluding three branch drivers from the petitioned-for unit of production and maintenance employees when one of the branch drivers spent all his time away from the plant and the other two branch drivers spent 50% of their time away from the plant while the production and maintenance employees all worked at the plant).

In addition, the truck drivers and the employees in the petitioned-for unit have immediate separate supervision with occasional supervision by substitutes or sporadic supervision by the supervisors of other employees. See **Overnite Transportation Company**, 322 NLRB 347 (1996); **Overnite Transportation** 331 NLRB 662 (2000) (inclusion of drivers in unit was not appropriate where drivers had separate immediate supervision.)

Furthermore, the employees in the petitioned-for unit are paid on an hourly basis, are eligible for overtime and are not eligible for a safety bonus; whereas, the truck drivers are paid by mileage and load, cannot receive overtime, and are eligible to receive a safety bonus.

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<sup>5</sup> In its Post-Hearing Brief, the Employer cites **Brand Precision Services**, 313 NLRB 657 (1994) for the proposition that the Board rejected the theory that a commercial drivers license requirement resulted in a lack of community of interest between drivers and other employees. I note that the facts of this case are distinguishable from the case herein, in that, the employees in the above cited case had constant contact during the work day in that they worked alongside each other and had common immediate supervision. Whereas, herein, the truck drivers spend ten (10) hours of a twelve (12) workday not working alongside any of the petitioned-for unit employees and they do not share a common immediate common supervision.

Although (1) a truck driver may volunteer to assist maintenance in repairs of the facility, (2) maintenance employees may assist in repairing a truck, (3) one of the maintenance employees may volunteer for weekend on-call truck driver duty, (4) on two (2) occasions within the last two (2) years when a truck driver was on light duty and unable to drive, that the truck driver was assigned to work at the facility, and (5) on one (1) occasion a production employee was assigned to ride with a truck driver who was on light duty, I find that the evidence indicates that these instances of interchange appear to be sporadic, on a voluntary basis, and not of a permanent nature.<sup>6</sup> In addition, there is no evidence that there has ever been any permanent transfers between the truck drivers and the employees in the petitioned-for unit.

Finally, the truck drivers' primary function is to deliver feed to the farmers and they do not perform any petitioned-for unit work on a regular or substantial basis. Likewise, the employees of the petitioned-for unit do not perform any driving on a regular or substantial basis. See **Home Depot USA**, 331 NLRB 1289 (2000) (although the drivers shared some duties with other employees the drivers did not spend a substantial portion of their time working alongside or in close proximity with other employees and the other employees were not involved substantially with driving).

Based on all of the foregoing, I conclude that the petitioned for unit is an appropriate unit and it is irrelevant that a larger unit including the truck drivers might also be appropriate. See **Loneragan Corp.**, 194 NLRB 742, 743 (1972).

## V. CONCLUSION AND FINDINGS

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<sup>6</sup> In its Post-Hearing Brief, the Employer cites **Transerv Systems, Inc.**, 311 NLRB 766 (1993) for the proposition that employees performing the same function have a sufficient community of interest. I note that the facts of this case are distinguishable, in that, the **Transerv** employees made deliveries for the employer in which sixty (60) to seventy (70) percent of the deliveries required a combination of the two job classifications at issue to execute the delivery and there was also evidence of permanent transfers between the two job classifications at issue. Whereas, here, the evidence indicates that the truck drivers make 100 percent of the deliveries with very sporadic support from petitioned-for unit employees.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.<sup>7</sup>

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.<sup>8</sup>

3. The labor organization involved seeks to represent certain employees of the Employer.<sup>9</sup>

4. There is no history of collective bargaining between the parties at the facility involved herein.

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

All production and maintenance employees, and dispatchers, excluding office clerical, truck drivers and supervisors as defined in the Act.

## **VI. 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. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as

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<sup>7</sup> The Employer filed a post-hearing brief which was duly considered. Petitioner did not file a post-hearing brief.

<sup>8</sup> The parties stipulate, and I find that, the Employer is a corporation doing business in the State of Alabama. The Employer operates several facilities in the State of Alabama and is engaged in the business of producing and processing chickens for retail and wholesale distribution. The only facility involved herein is the facility in Enterprise, Alabama. Annually, the Employer purchases and receives goods valued in excess of \$50,000 directly from points outside the state of Alabama.

such during the eligibility period and their replacements. Those in the military services of the United States 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 Retail, Wholesale And Department Store Union, AFL-CIO-CLC.

## **VII. LIST OF VOTERS**

In order to insure 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 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); **N.L.R.B. 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, four (4) 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 N.L.R.B. No. 50 (1994). 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. In order to be timely filed, such list must be received in

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<sup>9</sup> The parties stipulate, and I find that, the Petitioner is a labor organization within meaning of the Act.

the New Orleans Regional Office, 1515 Poydras Street, Suite 610, New Orleans, Louisiana 70112-3723 on or before May 14, 2004.

### **VIII. NOTICE POSTING REQUIREMENT**

According to Board Rules and Regulations, Section 103.20, Notice of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed.

### **IX. 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, D.C. 20570.

This request must be received by the Board in Washington by 5 p.m., EDT, on May 21, 2004.

Dated this 7th day of May, 2004, at New Orleans, Louisiana.

/s/ Rodney D. Johnson  
Rodney D. Johnson  
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National Labor Relations Board  
1515 Poydras Street, Suite 610  
New Orleans, LA 70112-3723

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