

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

**DR PEPPER BOTTLING COMPANY OF
TEXAS**

Irving, Texas

Employer

and

Case 16-RC-10580

**GENERAL DRIVERS,
WAREHOUSEMAN, & HELPERS,
LOCAL 745**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Dr Pepper Bottling Company of Texas, is a Delaware corporation with an office and a place of business in Irving, Texas, engaged in the business of manufacturing and distributing soft drink products. The Petitioner, General Drivers, Warehouseman, & Helpers, Local 745, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all employees classified as production and warehouse employees managed by and working in the Employer's warehouse and production departments located at 2304 Century Center Blvd., Irving, Texas. A hearing officer of the Board held a hearing and the parties filed briefs with me. The parties have no local bargaining history.

The Unit sought by the Petitioner includes all full-time and regular part-time employees classified as sanitation, quality control, forklift operators, forklift mechanics, syrup attendants, building maintenance and production maintenance employees, transport drivers, packaging foremen, maintenance foremen, Syr-mix machine operators, truck parkers, porters, pallet repair

employees, truck loaders, loading foremen, and all other employees managed by and working in the Employer's warehouse and production departments located at 2304 Century Center Blvd., Irving, Texas. The approximate number of employees in the petitioned-for unit is 187. The Employer agrees that the petitioned-for employees should be included in the unit found appropriate herein, but argues that the appropriate unit should also include merchandisers and all other truck drivers including bulk delivery, advance, full service, special events, and fountain food service drivers at all of its North Texas warehouse distribution centers including Fort Worth, Sherman, Corsicana, and Waco, an approximate total of 679 employees.

I. ISSUE

The issues are: (1) whether the petitioned-for unit should also include merchandisers and all other truck drivers including bulk delivery, advance, full service, special events, and fountain food service drivers; and (2) whether the scope of the unit should include employees employed at the Employer's North Texas warehouse distribution centers including Fort Worth, Sherman, Corsicana, and Waco.

For the reasons set forth below, I find that the employees in the petitioned-for unit share a sufficient community of interest to constitute an appropriate unit and that the Employer has failed to rebut the single-facility presumption.

To lend context to my discussion of the issues, I will first provide an overview of the Employer's operations, followed by a community of interest analysis. I will also discuss the factors that weighed in my finding that the Employer has not rebutted the single-facility presumption.

II. OVERVIEW OF EMPLOYER'S OPERATIONS

The Employer operates a production and distribution center in Irving, Texas. This facility receives raw materials and produces products that are packaged and distributed among

four other distribution centers, as well as directly to customers, via the Irving facility. The operation commences when raw materials are received into the Irving facility in the mixing area. Raw materials are batched, mixed and individually packaged in the production area. The individual packages are then packed in cases and on pallets and placed into inventory in the warehouse area at the Irving facility. The product is then transported via forklift and pallet jacks to the docks and onto trucks to be distributed to customers and the Employer's other distribution centers.

The Irving hub also provides human resources, information systems, quality control, marketing and merchandising functions for the North Texas region. In addition, Dr Pepper/7-Up Bottling Group maintains a Dallas corporate office that oversees operations in several states.

The employees in the petitioned-for unit all report to Irving managers and supervisors who function within the chain of command of the senior vice-presidents of operations who are also physically located in Irving. The currently vacant positions of senior vice-president of operations for the production function and the senior vice-president of operations for the warehouse, transport and inventory control function report to Jim Turner, the CEO of the Dr Pepper/7-Up Bottling Group. Various line and functional managers and supervisors report to the night operations superintendent (production), the production manager, and the production maintenance manger who, in turn, report to the senior vice-president of operations for the production function. Likewise, various line and functional managers and supervisors report to the director of warehousing and the night operations superintendent (warehouse, transport and inventory control) who, in turn, report to the senior vice-president of operations for the warehouse, transport and inventory control function. Within the maintenance function, the director of facilities reports to the vice-president of operations, and the forklift maintenance supervisor reports to the fleet safety manager.

At the outset of the hearing, the parties agreed that there were no supervisory issues to be litigated. The record reflects that managers and supervisors have the authority to issue verbal warnings, suspend employees, approve vacations and overtime, and hire and discharge employees, or effectively recommend such action. Based on the record evidence, I conclude that each of the supervisory and managerial individuals listed above are supervisors within the meaning of Section 2(11) of the Act because they have the authority to discipline, hire, or terminate employees, or effectively recommend such action, and are therefore excluded from the appropriate unit.

III. COMMUNITY OF INTEREST

The applicable inquiry in the determination of unit composition is whether the employees in the petitioned-for unit share a sufficient community of interest. Several factors weigh in this determination: method of pay; hours of work; benefits; common supervision; qualifications, training and skills; job functions; the amount of time spent away from the plant situs; interaction and contact among employees; functional integration; and bargaining history.

A. Facts

Employees wear the same uniforms region-wide, which vary slightly based on the employee's job classification. The Irving facility maintains employee schedules that begin and end at approximately the same time. Production employees work a four-day, ten-hour workweek. Warehouse employees work a four-day, eight-hour schedule, and maintenance employees generally work a five-day, eight-hour week, but shifts must cover production operating hours. Drivers' schedules fluctuate depending on delivery schedules. Warehouse and production employees are paid hourly, while the manner in which drivers are paid varies. Bulk, transport, and pre-mix/special events drivers are paid hourly; merchandisers and advance delivery drivers are paid on a daily basis; and full service and post-mix/southwest fountain

drivers are paid a base plus commission and are not paid overtime. In addition to regular pay, bulk and advance delivery drivers have incentive pay opportunities. Warehouse, production, and transport employees receive weekly paychecks, while all other driver employees are paid on a bi-weekly basis. Employees use one of three time clocks. One time clock is designated for warehouse and transport employees, one for production employees, and one for merchandisers and all other drivers. The record is unclear regarding which time clock is used by bulk drivers.

Employees in the petitioned-for unit share a break area, parking areas, restrooms, and smoking areas. The same employee handbook applies to all employees, regardless of classification, although individual employee classifications may be subject to additional policies and procedures unique to the position. All employees enjoy the same benefits package including life and health insurance, a 401(k) profit sharing plan, and a safety incentive program. Annual reviews are conducted for all employees using the same form. Employees attend meetings applicable to all employees such as safety meetings and benefits meetings, but they may also attend meetings specific to their department or job classification. Warehouse, production, maintenance and transport employees do not generally interact with customers in the performance of their duties, while merchandisers and all other drivers do, in fact, come into contact with customers on a regular basis.

All drivers follow Department of Transportation regulations and are required to maintain a commercial drivers license. Transport and bulk drivers are also required to maintain log books. Bulk and transport drivers and merchandisers are skilled in the operation of forklifts and/or pallet jacks. Transport drivers do not load their trucks in Irving, but the majority of bulk drivers do. Merchandisers, advance delivery drivers, and pre-mix/special events drivers all participate in the placement of product at the customer's place of business. Two transport drivers drive tanker trucks used to haul syrup and possess a special certification for such work.

Drivers tend to use different docks based on the type of truck they drive; for example, bulk and transport drivers use those docks best suited for rear-entry tractor-trailers. Forklift and building maintenance employees based in the Irving facility perform the duties of their position for Irving as well as all outlying facilities. Warehouse equipment and trucks are exchanged among facilities on occasion and all drivers except transport drivers use hand-held computers to manage inventory and invoicing responsibilities.

Interaction among employees occurs as the product passes from one phase of the operation to the other. Employees otherwise need not interact in the performance of their duties, but they do come into contact with each other in common areas. Employees also interact at social functions, which occur at each facility.

B. Classifications Upon Which Parties Agree

The parties agree that the following classifications of employees should be included in any unit found appropriate:

PRODUCTION DEPARTMENT

Sanitation Technicians

Four sanitation technicians work in the production department. These technicians sanitize the lines and equipment in the production and filling facility and packaging areas. They report to the sanitation/quality control supervisor, who reports to the quality control manager.

Quality Control Employees

Five quality control technicians and two lead technicians oversee the quality of the products and packages produced and stored at the facility. They work opposite the filling area in a laboratory and report to either the sanitation/quality control supervisor (night shift) or quality control manager (day shift).

Syrup Attendants

Four syrup attendants mix syrup and prepare it for transfer to the filling area for production. They work in the filling area and report to either the sanitation/quality control supervisor (night shift) or quality control manager (day shift).

Forklift Operators (Production)

Approximately 20 production forklift operators (12 day shift and eight night shift) transport raw materials to the packaging area and packaged product from the packaging area to the warehouse. They report directly to one of several line supervisors or managers, who, in turn, report to the production manager.

Production Maintenance

Ten production maintenance employees (approximately six day shift and four night shift) are responsible for the installation and repair of the equipment on the production lines. The employees in production maintenance include eight mechanics, one foreman and one electrician. They report to the production maintenance manager.

Packaging Foremen

Packaging foremen oversee all elements of the production lines in both the filling areas and packaging areas. They provide relief capacity as they are able to perform any function within the production lines and report directly to one of several line supervisors or managers, who, in turn, report to the production manager.

Machine Operators

Twenty machine operators perform a variety of functions on machines on the production lines in the packaging area. They report directly to one of several line supervisors or managers, who, in turn, report to the production manager.

Filler Operators

Twelve filler operators (eight day shift and four night shift) package liquid product into bottles, cans and boxes. They report directly to one of several line supervisors or managers, who, in turn, report to the production manager.

Other Production Machine Operators

Three syr-mix machine operators handle the water line, dual machine operators operate two machines at once, and relief machine operators are interchangeable between forklift and production line responsibilities, and are assigned as needed. These production employees report directly to one of several line supervisors or managers who, in turn, report to the production manager.

WAREHOUSE, TRANSPORT & INVENTORY CONTROL

Forklift Operators (Warehouse)

Approximately 27 warehouse forklift operators (11 day shift and 16 night shift) transport raw materials from common carriers and finished product from Employer trucks to the warehouse for use by production employees. They also transport finished product from the warehouse to common carriers and Employer trucks. Warehouse forklift operators report to the warehouse manager who, in turn, reports to the night operations superintendent.

Loading Foremen

Five loading foremen (two day shift and three night shift) ensure that trucks are properly loaded and build pallets or load trucks as needed. These employees report to either the warehouse manager (day shift) or the night operations superintendent (night shift) who, in turn, reports to the senior vice-president of operations.

Truck Loaders

Thirty-two truck loaders work the night shift to build pallets and prepare them for loading onto delivery trucks. Loaders report to the night operations superintendent who, in turn, reports to the senior vice-president of operations.

Pallet Repairer, Truck Parker, Porter

A pallet repair employee repairs pallets and operates a forklift. This employee, along with a truck parker and porter, reports to the warehouse manager who, in turn, reports to the senior vice-president of operations.

Transport Drivers

Twenty-five full-time and two part-time transport drivers deliver products from the Irving warehouse to the other facilities in North Texas. Transport drivers operate rear-load double axle tractors and 42 to 50 foot trailers out of the Irving facility. Transport drivers are not scheduled to work on weekends, but may volunteer to do so. They report to the transport manager who, in turn, reports to the night operations superintendent.

MAINTENANCE

Fork Lift Mechanics

Five forklift mechanics are responsible for the repair and maintenance of all powered industrial units, including pallet jacks and forklifts. These employees fall under the maintenance department. They report to the forklift maintenance supervisor who, in turn, reports to the fleet safety manager.

Building Maintenance

Building maintenance employees are responsible for the repair and maintenance of each of the North Texas facilities. The five Irving-based employees, including a scrubber operator who physically works in the production areas, report to the director of facilities who, in turn, reports to the vice-president of operations. Three of the five employees—a foreman, painter, and

mechanic—travel approximately 16-24 hours per month collectively to perform work at the other facilities, as necessary.

C. Disputed Employee Classifications

The parties disagree as to whether the following classifications of employees should be included or excluded from an appropriate unit:

Bulk Drivers

Bulk drivers transport product from the Irving facility to large retailers where they unload the product with a pallet jack into retailers' storage rooms or warehouses. Like transport drivers, bulk drivers operate rear-load double axle tractors and 42 to 50 foot trailers. Bulk drivers are employed at each of the North Texas facilities.

Advance Delivery Drivers (or “utility route sales drivers”)—either home market or cold drink

Advance delivery drivers transport product from the Irving facility to small retail accounts. Home market advance delivery drivers service convenience stores, drug stores and other mid-size accounts. Cold drink advance delivery drivers service smaller accounts such as delicatessens. Advance drivers operate 16-bay single axle trailers, and are employed at each of the North Texas facilities. These drivers merchandise the product upon delivery.

Pre-mix/Special Events Drivers

Pre-mix/special events drivers deliver finished product, stock concession stands, and set up tanks for special events such as fairs and major sporting events. Their routes change on a seasonal basis, and they typically operate 16-bay single axle trailers out of the Irving facility only.

Post-mix/Southwest Fountain Drivers

Southwest fountain drivers service individual restaurants and convenience stores that purchase fountain syrup and other packaged goods, such as water. A delivery consists of one

box, one bag in a box, one case, or one tank at a time. These drivers operate 16-bay single axle trailers out of the Irving facility only.

Full Service Drivers

Full service drivers service customers with vending machines. The driver completes delivery by filling the vending machines. Full service drivers operate 12-bay straight trucks, rather than tractor-trailers and are employed at each of the North Texas facilities.

Merchandisers

Merchandisers handle product delivered by bulk drivers and process it to customers' sales floors. They build displays, stock shelves, fill coolers and vending machines, rotate products, and sign and price products, sometimes several times per day per customer. The merchandisers spend 98 percent of their time in the field, away from the distribution center to which they are assigned. Merchandisers operate small pickup trucks and are employed at each of the North Texas facilities.

D. Analysis

The Act does not require that the bargaining unit be the only unit or the most appropriate unit, but only that the unit be "appropriate." *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd. on other grounds* 190 F.2d 576 (7th Cir. 1951). In evaluating the appropriateness of a petitioned-for bargaining unit, the Board relies on the community of interest standard. *Overnight Transportation*, 322 NLRB 723, 724 (1996), *citing NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985). The Board considers several factors in determining community of interest among employees, such as method of pay; hours of work; benefits; common supervision; qualifications, training and skills; job functions; the amount of time spent away from the plant situs; interaction and contact among employees; functional integration; and bargaining history. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). It is well settled that warehouse,

production and maintenance employees may constitute an appropriate unit. *See, e.g., J&L Plate*, 310 NLRB 429 (1993). The Board also makes clear that drivers may be included in more comprehensive, industrial-type units when they share a sufficient community of interest. *Tallahassee Coca-Cola Bottling Co., Inc.*, 168 NLRB 1037 (1967), *enfd.* 409 F.2d 201 (5th Cir. 1969); *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962); *E.H. Koester Bakery*, 136 NLRB 1006 (1962). When parties disagree regarding the inclusion or exclusion of a classification, a determination of an appropriate unit is predicated on a community of interest analysis that includes consideration of the Petitioner's desires. *E.H. Koester Bakery*, 136 NLRB 1006, 1011-1013 (1962).

Here, we have no disagreement regarding the inclusion of production, maintenance, warehouse and transport employees. The Employer asserts that a more comprehensive unit which includes all drivers and merchandisers is the appropriate unit and that excluding some drivers and all merchandisers creates an inappropriate unit. Therefore, disagreement as to inclusion or exclusion exists with regard to drivers other than transport drivers and merchandisers, requiring an application of the community of interest factors.

Drivers other than transport drivers are paid differently based on their classification. They report to separate supervisors and are not organizationally aligned with transport drivers under the warehouse, transport and inventory control function. Their interaction with warehouse and production employees is minimal, limited primarily to interaction with forklift operators at the Irving location. They perform a distinct job function that includes contact with customers, unlike transport drivers who primarily distribute product among Employer-owned facilities.

Merchandisers are paid on a daily basis, unlike production, warehouse, maintenance and transport employees, who are paid on an hourly basis. Merchandisers report to one of the five facilities, but spend the majority of the day at retail locations placing and marketing product.

They do not interact with other employees in the performance of their duties, with the exception of bulk drivers who deliver the product to retailers' storage or warehouse facilities. Merchandisers do not engage in any warehousing or production functions. They do not perform the delivery function that drivers perform. They are not organizationally aligned with either production, warehouse, transport, or maintenance functions.

These facts support a finding that drivers other than transport drivers and merchandisers not included in the petitioned-for unit do not share such an overwhelming community of interest so as to mandate their inclusion in the petitioned-for unit. Accordingly, I will exclude drivers other than transport drivers and merchandisers from the unit found appropriate herein. I also find that the employees in the petitioned-for unit enjoy a common work site and common break areas, schedules, supervision, benefits, meetings, and policies, and therefore share a community of interest warranting their inclusion in the unit.

III. SINGLE FACILITY VS. MULTI-FACILITY

As referenced above, the Petitioner seeks a single-facility unit consisting of production, warehouse, maintenance and transport employees located in Irving, Texas. The Employer seeks a more comprehensive unit consisting of the petitioned-for classifications, as well as merchandisers and all other drivers, in a multi-facility unit encompassing the Irving plant, and the Fort Worth, Corsicana, Sherman, and Waco distribution centers. The Board has long held a single location unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location unit may be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” *Bowie Hall Trucking*, at 41. In determining whether the presumption has been rebutted, the Board considers various factors such as centralized control over daily operations and labor relations; similarity of employee skills, functions, and working conditions; degree of employee interchange; geographic separation; and bargaining history if any exists. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Esco Corp.*, 298 NLRB 837, 839 (1990). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB 429 (1993). I find the Employer has failed to present sufficient evidence to rebut the presumptive appropriateness of the Employer’s Irving production and warehouse facility as a single-facility unit.

A. Centralized Control

Although the Employer’s operations and labor relations functions are centralized, management at the individual facilities exercises autonomy in the operation of their respective facilities, and the Employer has therefore failed to rebut the single-facility presumption on this basis.

The Employer's operations and human resources functions are centralized in Irving. Human resources, payroll, information systems, forklift maintenance, building maintenance, quality control, marketing, merchandising, and the senior vice-president of operations are all based in Irving, the hub of the operation, and personnel tied to these functions travel and provide service to the outlying facilities. The record reflected that service provided to the outlying warehouse distribution centers by Irving-based employees are, at least in some instances, charged against the profits of individual facilities. Although the human resources function is centralized in Irving, the Employer employs staff at each facility who are responsible for a portion of this function for their respective facilities, including training and orientation, processing new-hire paperwork, processing employee requests to transfer, and processing new-hire requisition forms used to request approval to hire. A uniform employment application, employee handbook, and orientation packet are used by all the facilities. The Irving and Fort Worth facilities operate "job lines" used to advertise job openings to prospective candidates. Personnel and other financial records are maintained in Irving, however, each of the distribution centers also maintains "skeleton" personnel files on each employee which includes copies of documents located in the official, centralized record. The CEO based in the Dallas corporate office retains the sole authority to approve all budget allocations, salary actions and benefit changes.

Human resources in Irving advises facility managers regarding new-hire and termination actions. Facility or departmental managers authorize leave and vacations and may verbally warn and suspend employees without further approval. Warehouse distribution sales managers at each location are allotted a budget and hold autonomous spending authority up to \$1,000.00. Facility managers may not otherwise engage in purchasing negotiations, sign leases, or make structural changes. Facility managers conduct interviews, have the authority to effectively recommend

terminations and transfers, determine and recommend and administer discipline actions, and determine delivery patterns. Facility managers from each location travel to Irving approximately once per month to share and receive sales, promotional and other general information. Employees at each facility are supervised by managers or supervisors located at individual facilities.

The Board has held that centralized administration is not the primary factor it will consider in determining whether employees at two or more facilities share a community of interest. *Neodata Product/Distribution*, 312 NLRB 987, 989 fn. 6 (1993). Moreover, the burden is on the Employer to overcome the single-facility presumption by a showing of an absence of local autonomy. See *J&L Plate*, 310 NLRB 429 (1993); *Red Lobster*, 300 NLRB 908 (1990). Here, sales managers at each facility recommend new hires and disciplinary actions. They schedule deliveries and approve time off and vacations. Managers also manage a budget and may authorize individual expenditures up to \$1,000 per transaction. Each facility operates under separate supervision. Finally, the human resources function requires the location of human resources staff at each facility. This evidence reflects that although there is substantial centralized control, there is also substantial local autonomy, and thus the Employer has not rebutted the single facility presumption. *J&L Plate*, 310 NLRB 429 (1993).

B. Similarity of Skills, Functions and Working Conditions

A single employee handbook applies to all employees, regardless of classification, although individual employee classifications may be subject to additional policies and procedures unique to their position. All employees enjoy the same benefits package including insurance, a 401(k) profit sharing plan, and a safety incentive program. Annual reviews are conducted for all employees using the same form. Employees wear the same uniforms region-wide, which vary slightly based on the employee's job classification. The facilities maintain the

same employee schedules that begin and end at approximately the same hour. The record did not contain comparative wage information.

Employees at each facility attend meetings applicable to all employees such as safety meetings and benefits meetings, but they may also attend meetings specific to their department or job classification. Employees from separate facilities do not attend joint meetings. Employees from different facilities, other than the transport drivers, do not regularly come into contact with each other with a few exceptions where centralized personnel travel to the outlying facilities to perform their duties, such as forklift maintenance, human resources, and information systems personnel. The Employer hosts an annual golf tournament, which employees from all facilities are invited to attend.

The outlying facilities do not employ transport drivers or production employees. The skills required for each job classification do not vary from facility to facility. Warehouse equipment and trucks are exchanged among facilities, and all drivers except transport drivers use hand-held computers to manage inventory and invoicing responsibilities.

Despite a finding of product integration, similar job classifications, and the same benefits, an absence of evidence of contact among employees of different facilities and a showing that individual plants perform different functions supports a conclusion that a single-facility unit is appropriate. *J&L Plate*, 310 NLRB 429 (1993). Although employees at the five facilities share largely similar working conditions and their skills within each classification vary slightly, if at all, a primary distinction arises from the fact that Irving is the only production facility. Although some similarities exist, this functional difference supports a finding in favor of the Petitioner that the Employer has not rebutted the single-facility presumption on the basis of similar skills, functions, and working conditions.

The Employer argues that the application of *Neodata Product/Distribution, Inc.* 312 NLRB 987 (1993) to the facts in this case demonstrates a functional integration sufficient to rebut the single-facility presumption. *Neodata* is factually inapposite because that case revolved around a two-facility product distribution unit that handled 250,000 daily orders for its clients' products. The Employer in our case operates a hub production facility and employs the outlying facilities for warehouse and distribution functions only. The Employer highlights a critical distinction between *Neodata* and the instant case. The employees at both facilities in *Neodata* had frequent contact with each other in person and via telephone and facsimile. These employees also attended joint orientation sessions, meetings and Employer-sponsored events. *Neodata* also included evidence of common supervision over the inventory supply clerks at the two facilities. The facts in the instant case do not demonstrate that interaction among employees at separate facilities occurs at an equivalent level. The Employer has, therefore, failed to rebut the single-facility presumption based on similarity of skills, functions and working conditions.

C. Employee Interchange

The record reflected little, if any, employee interchange, supporting the Petitioner's contention that a single-facility unit is an appropriate unit. Requests to transfer are initiated by the employee and approved through a chain of managers beginning with the employee's immediate supervisor and ending with the supervisor of the position to which the employee desires to transfer. The evidence revealed several typical progressions of employees from merchandiser, to advance delivery driver, to bulk driver, to pre-mix/special events driver; from bulk to transport; and from warehouse to production. The record revealed that bulk and transport driver positions are typically filled from within the company. Permanent transfers occur primarily on a voluntary basis, at a rate of less than three percent per year. The Employer

offered no other evidence that employees from individual facilities interchanged responsibilities on a regular basis, whether temporary, permanent, or voluntary.

The Employer cites *Kansas City Coors*, 271 NLRB 1388 (1984), *Caron International, Inc.*, 222 NLRB 508 (1976) and *Coplay Cement Co.*, 288 NLRB 66 (1988) to support its argument that employee interchange “mandates” a finding of a multi-plant unit. The cited authority does not support this argument. In *Kansas City Coors*, the Board found a petitioned-for multi-facility unit appropriate where a “rapidly approaching and imminent consolidation” would result in employees of the separate facilities working side-by-side under the same roof. *Kansas City Coors*, 271 NLRB 1388, 1389 (1984). Unlike the case at hand, in *Caron* and *Coplay*, the separate facilities engaged in production operations were complementary and highly integrated. Further, in *Coplay*, the Petitioner sought two single-facility units. In the instant case, the Employer describes the integration of a warehouse, production, and maintenance facility “hub” and four other warehouse “spokes.” Production operations do not occur at any of the outlying facilities. Contrary to the Employer, I do not find that the record evidence establishes frequent interchange among employees of the facilities. The Employer concedes that the cross-location transfer rate is not substantial, but offers that a broader extrapolation would no doubt produce a greater percentage. Yet, the Employer offered no such evidence. Further, the Employer argues that the similarity in skills allows for regular interchange of classifications among facilities, but failed to offer any aggregate data in support of this contention. *New Britain Transportation Co.*, 330 NLRB 397 (1999).

Among the factors considered in determining whether the single facility presumption has been rebutted, the Board views the absence of employee interchange as a critical factor. *First Security Services Corp.*, 329 NLRB 235 (1999). The Employer has not presented sufficient

evidence of employee interchange to rebut the single-facility presumption. See *New Britain Transportation Co.*, 330 NLRB 397 (1999).

D. Geographic Separation

The geographic separation in facilities supports Petitioner's argument that a single-facility unit is appropriate. The parties stipulated the following distances from each facility to the Irving facility: Fort Worth—30 miles; Corsicana—70 miles; Sherman—70 miles; and Waco—100 miles. Geographic separation is not determinative, but it is significant here because other factors support the single-facility unit. *New Britain Transportation Co.*, 330 NLRB 397 (1999).

E. Bargaining History

Although no bargaining history exists concerning the employees at the Employer's North Texas facilities, and no labor organization is seeking to represent the five facilities in a single unit, the Employer argues that the bargaining history at its multi-facility units in other states calls for a finding of a multi-facility unit in this case. Bargaining history is a factor to be considered in light of the other factors in the single-facility presumption analysis. See *e.g.*, *Coplay Cement Co.*, 288 NLRB 66 (1988). The bargaining history at other Employer locations in other states considered with the lack of employee interchange and bargaining history at the facilities at issue leads me to conclude that the single-facility presumption has not been rebutted.

F. Conclusion

Based on the forgoing, I find that the Employer has failed to rebut the single-facility presumption. Critical to my determination is the fact that the Employer failed to demonstrate lack of autonomy at the facility level, sufficient employee interchange and integrated functionality.

IV. OTHER CLASSIFICATIONS

Although one of the five forklift maintenance operators reports to a supervisor under the Irving-based maintenance function, he spends ninety percent of his time in Fort Worth. The operator's remaining time is divided among the other North Texas facilities in the region. The Employer urges that the inclusion of this employee obliterates the single-facility presumption. On the contrary, I find that both the employee's position as the primary traveling forklift operator and his supervision emanate from the Irving maintenance function; therefore, his position should be included in the appropriate unit found herein.

The transportation coordinator, Mike File, assists the transportation manager. His responsibilities do not include driving. The parties agreed that the Employer would include him on the *Excelsior* list and afford him the right to vote by challenged ballot.

The parties stipulated, and I find, that that temporary, intermittent summer help for advance delivery drivers should be excluded from an appropriate unit.

V. EMPLOYER'S MOTION TO REOPEN AND SUPPLEMENT RECORD

Subsequent to the closing of the record in this matter, the Employer filed a Motion to Reopen and Supplement the Record seeking to present additional, but allegedly newly-discovered evidence, demonstrating that the unit as defined in the petition was determined based on the extent of organization. The Employer's Motion to Reopen and Supplement the Record is denied.

Although the Employer accurately cites the legal principles that guide our decision, it misapplies the rule to the facts at hand. First, on its face, the proffered document is ambiguous and does not clearly represent that the Petitioner's decision to withdraw one petition and file another was based on union support or the lack thereof. In fact, the Petitioner, in its Response to the Employer's Motion to Reopen and Supplement the Record, presents a plausible reading of the proffered document suggesting the Petitioner's decision was based on the difficulty in

communicating with a group of employees who spend the vast majority of their time away from the facility and who work varying work schedules. Second, the evidence proffered by the Employer does not add to the body of evidence already presented by the Employer at the hearing and the Post-Hearing Brief of the Employer. In fact, the Employer's Brief makes it clear that the Employer considers the record evidence and the withdrawn petition sufficient to demonstrate the Petitioner's motive to limit the unit based on the extent of organization. I have considered this argument, along with the record evidence and the withdrawn petition, and have given it appropriate weight. Based on the foregoing, the Employer's Motion to Reopen and Supplement the Record is denied.

VI. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated and I find that the Employer, a Delaware corporation with an office in and place of business in Irving, Texas, is engaged in the business of manufacturing and distributing soft drink products. During the past 12 months, Dr Pepper Bottling Company of Texas sold and shipped from its Irving facility goods valued in excess of \$50,000 directly to points outside the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the petitioner's status as a labor organization.

5. 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.
6. 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:

INCLUDED: All full-time and regular part time employees classified as sanitation, quality control, syrup attendants, forklift operators, production maintenance employees, packaging foremen, machine operators, filler operators, syr-mix machine operators, and all other machine operators, loading foremen, truck loaders, pallet repairer, truck parker, porter, transport drivers, forklift mechanics, building maintenance employees, and all other employees managed by and working in the Employer's warehouse and production departments located at 2304 Century Center Blvd., Irving, Texas.

EXCLUDED: All other employee including office clerical, merchandisers, bulk drivers, advance delivery drivers, pre-mix/special events drivers, post-mix/southwest fountain drivers, full service drivers, all other truck drivers, gate checkers, guards, and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the General Drivers, Warehouseman, & Helpers, Local 745.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

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 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. 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.

B. Employer to Submit List of Eligible Voters

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 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 hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Fort Worth Regional Office, Federal Office Building, Room 8A24, 819 Taylor Street, Fort Worth, Texas 76102 on or before May 27, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. 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. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on June 3, 2004. The request may **not** be filed by facsimile.

Dated: May 20, 2004

/s/ Curtis A. Wells

Curtis A. Wells, Regional Director,
National Labor Relations Board
Region 16
819 Taylor Street - Room 8A24
Fort Worth, TX 76102