

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

KEYSTONE AUTOMOTIVE INDUSTRIES, INC.

Employer

and

TEAMSTERS LOCAL 970, a/w THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

Case 18-RC-17261

DECISION AND DIRECTION OF ELECTION

Petitioner seeks an election in a unit of all warehouse employees, delivery drivers, and shuttle drivers employed by the Employer at its Minneapolis, Minnesota facility. The Employer and Petitioner agree that the unit should include 16 warehouse employees, 6 shuttle drivers, and 3 delivery drivers. In addition, the Employer seeks to include in the unit 7 inside sales coordinators, 14 route salespersons (which include both in-town route salespersons and out-of-town route salespersons), and 2 over-the-road shuttle drivers.¹ Petitioner objects to the inclusion of the inside sales coordinators, route salespersons, and over-the-road drivers as employees who do not share a sufficient community of interest with the petitioned-for employees.

¹ The Employer attempted to present evidence at the hearing regarding its plans to add to its employment employees currently employed at a facility located in Osseo, Minnesota. The record contains inconsistent information regarding whether the Osseo operation is currently owned by the Employer or whether the Employer is purchasing it. The Employer's intent in offering this evidence is unclear because at no point in the hearing or in its post-hearing brief did the Employer contend that an election should be delayed due to the anticipated expansion. Therefore, I will order an election, and eligibility to vote will be determined by whether the Osseo employees are employed at the Employer's Minneapolis facility during the payroll period immediately preceding issuance of this decision.

After reviewing the record, I conclude that the unit sought by Petitioner is appropriate for collective bargaining. I further conclude that the inside sales coordinators and route salespersons should be excluded from the unit, but that the two long-haul drivers should be included in the unit.

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The first section of this decision will provide a brief overview of the Employer's operations. The second section will describe the jobs of the employees that Petitioner and the Employer agree should be included in the bargaining unit, and the third section will describe the jobs of the employees in dispute. Next, I will describe various working conditions of the two

² The Employer, Keystone Automotive Industries, Inc., is a Minnesota corporation with an office and place of business in Minneapolis, Minnesota, where it operates as a wholesale and retail vendor of aftermarket automotive and truck parts. During the past calendar year, a representative period, the Employer purchased in excess of \$50,000 in goods and services from points located directly outside the State of Minnesota. During the same time period, the Employer derived gross annual revenue in excess of \$500,000.

groups of employees. Finally, I will review community-of-interest factors and explain my conclusions.

THE EMPLOYER'S OPERATION

At its Minneapolis location, the Employer sells and delivers collision replacement parts. The facility is divided into two distinct operations: retail and wholesale. Petitioner is seeking to represent warehouse and driver employees from both the retail and wholesale sides of the business. With regard to the retail operation, generally customers call the Employer to order parts. The inside sales coordinators (herein ISCs) take customer orders over the telephone and input orders into the computer system. The computer then generates a pick ticket, listing the parts the customer ordered. Using the pick ticket, the warehouse employees then pull the appropriate parts from the warehouse and place the parts in the staging area of the route salesperson listed on the pick ticket. Generally, the route salesperson and a warehouse employee then load the truck together, and the route salesperson delivers the parts to the customer. With respect to the wholesale side, the record contains little information regarding how it is run.

It appears that overall responsibility for the Minneapolis facility is the job of General Manager Charles Fagerhaugh. Reporting to Fagerhaugh are Sales Manager Timothy Rees, and Warehouse Managers Kenneth North and Tyrone Belmore. Also reporting to Fagerhaugh are General Managers Michael Broman and Gary Grunwald. There is little record evidence regarding the duties of Broman or Grunwald. Also reporting to Fagerhaugh is Jim Dow, whose title is not revealed. The Employer also employs Catherine Hall as its office manager. Presumably, she also reports to Fagerhaugh, although the record is silent on that point.

THE JOBS OF THE EMPLOYEES NOT IN ISSUE

Warehouse Employees

It appears from the record that the duties of the warehouse employees on both the retail side and wholesale side are similar. Warehouse employees work primarily in the warehouse, pulling parts, staging parts in the appropriate route salespersons' staging area, and loading route salespersons' trucks. As noted above, warehouse employees know what part to pull by the "pick tickets" generated by a computer after ISCs enter customer orders. The Employer estimates that each day 400 to 500 pick tickets are generated. The warehouse employees obtain these pick tickets by entering the office area where ISCs work and taking the pick tickets. Warehouse employees are generally assigned to perform this work for a specific route salesperson. Employees classified as warehouse employees also perform shipping and receiving duties.

Warehouse employees work a standard 40-hour week. Their work location is the warehouse, which is separated by a wall from the work area of the ISCs (although a large window permits visual access between the two areas). They work one of three shifts: 7:30 a.m. to 4:00 p.m., 8:00 a.m. to 4:30 p.m., or 8:30 a.m. to 5:00 p.m. They are paid an hourly wage, punch a time clock, and earn anywhere from \$9 per hour to \$17 per hour and are eligible for overtime. Warehouse employees are supervised by Warehouse Managers Tyrone Belmore and Kenneth North. North evaluates warehouse employees, with some unspecified role by Sales Manager Rees. Rees is not involved in the hiring of warehouse employees, and testified that he did not know their wage rates. Rees also testified that he does not discipline or fire warehouse employees.

Delivery Drivers

Delivery drivers work only on the retail side of the business and are considered warehouse employees. Delivery drivers have two primary functions: (1) to make out-of-the-ordinary deliveries to customers; and (2) perform general warehouse duties. With regard to their first function, delivery drivers do not have an assigned route and are only sent to make deliveries when a customer needs a part picked up or delivered and the in-town route salesperson assigned to that customer has already left on his route. According to the Employer, about 80 percent of the delivery driver's day is spent performing driving functions, and the rest of the day is spent performing warehouse duties. The delivery drivers use a stake bed, pick-up truck, or small cube van to deliver parts. A specialized license to deliver is not required, and the only requirement to make the deliveries is a good driving record. All warehouse employees with a good driving record are eligible to make deliveries, but the Employer has assigned delivery duties to specific warehouse employees. Delivery drivers are paid hourly, punch a time clock, and do not make commission. The record does not reveal their hourly wage. However, because they are classified as warehouse employees, I assume their hourly pay range is the same as for other warehouse employees.

Evidence regarding supervision of delivery drivers is conflicting. At one point, Sales Manager Rees testified that he supervises delivery drivers. However, Rees also indicated that they report to Warehouse Manager North. For example, according to Rees, North decides whom to pull from the warehouse for deliveries. While the record is not clear as to who gives a driving test to delivery drivers, Rees testified he does not. He also testified that he does not hire, discipline or fire delivery drivers.

Shuttle Driver on Retail Side

There is one employee classified as a shuttle driver on the retail side, Marty Hanson. Hanson's primary responsibility is to support the out-of-town route salesperson. Hanson delivers products to out-of-town customers to offset the days that the route salesperson is not covering that particular route. He leaves every morning with a load of product, delivers it, and returns to the facility every afternoon. He can also fill in when a route salesperson is sick or on vacation, although the record does not reveal whether this is a regular occurrence. There is no evidence in the record concerning whether Hanson performs sales duties when he fills in for the out-of-town route salesperson. He is paid hourly without commission. The record does not reveal his hourly wage. Sales Manager Rees testified that he supervises Hanson, but also appeared to testify that he does not have the authority to hire, fire or discipline employees in the position occupied by Hanson.

Shuttle Drivers on Wholesale Side

The final employees the parties agree should be included are five shuttle drivers on the wholesale side. Shuttle drivers deliver large amounts of product to customers. They operate 26-foot straight trucks and must have a class B license to operate the trucks. Unlike the delivery drivers and route salespersons, shuttle drivers are subject to DOT regulations and must keep a logbook. Shuttle drivers do not engage in sales. Like the delivery drivers, when they are not driving, shuttle drivers perform warehouse duties. They are paid hourly and do not receive commission or mileage. They earn between \$9 per hour and \$15 per hour. If they stay overnight on a route, they receive a \$75 per diem. The record is not entirely clear, but the job description for shuttle drivers provides that they are supervised by the warehouse manager.

THE JOBS OF THE EMPLOYEES IN ISSUE

The Inside Sales Coordinators

There are inside sales coordinators on both the retail and wholesale sides of the business. ISCs work inside an office in a glassed-in area. The warehouse is on the other side of the glass. ISCs' primary responsibilities are to answer the telephones, take orders from customers and input the orders in the computer system. They also take orders from walk-in customers and orders from the fax. According to Sales Manager Rees, only ISCs answer the telephones. If they need help answering phones, Warehouse Manager North would assist. After they input a particular order in the computer system, a pick ticket is generated. The pick ticket lists the customer, purchase order, part numbers, location of the part, and the route salesperson assigned to the customer. Either a warehouse employee or an ISC will pull the pick ticket from the computer and file it in the corresponding route salesperson's folder. Warehouse employees are then responsible for taking the pick tickets and pulling the parts. ISCs will assist warehouse employees who are unable to find a part by accompanying the warehouse employees to the warehouse to look for the missing part. The frequency of that assistance by ISCs is unclear. Sales Manager Rees testified that this would happen "on occasion." At another point, Rees testified that it would be "very rare" for an ISC to pull a part in the warehouse. On the other hand, one ISC employee testified that he looks for parts 10 to 40 times per day. It appears that one explanation for this discrepancy between Rees and the ISC employee is that the ISC employee who testified is the "go to" person when parts cannot be found. Thus, Rees's testimony may accurately reflect the experience of other ISC employees. The record is not entirely clear on this point, but it appears that ISCs are not trained on the forklift or other

machines used by warehouse employees to pull parts. ISCs also generate invoices for the route salespersons.

ISCs average \$11 per hour, punch a time clock, are hourly paid, and are scheduled to work the same hours as the warehouse employees. In addition, ISCs receive a commission of two-tenths of the total monthly sales. According to the Employer, in their months of heaviest sales, an ISC would gross \$2,000 per month in commissions. According to Rees, taking into account their hourly pay and commissions, ISCs earn \$30,000 to \$44,000 annually. ISCs are supervised by Sales Manager Rees. He has authority to hire, fire and discipline. Rees testified that General Manager Fagerhaugh evaluates ISCs.

The Route Salespersons

There are seven in-town route salespersons and seven out-of-town route salespersons. Both groups are assigned a route to travel, where they deliver product to customers, meet with customers, and sell products. According to the Employer, about 80 percent of a route salesperson's time is spent servicing existing accounts and making deliveries, and 20 percent of their time is spent on sales functions. However, this breakdown is not reflected in their compensation (see below). Examples of sales functions include dropping off flyers, talking to customers about buying new products, and making cold calls. All route salespersons drive cube vans on their routes (a van with a 12- to 14-foot box on the back of the van cab, similar to a U-Haul truck). They do not need a specialized license to drive the cube van. In-town salespersons are assigned specific routes and typically make two runs per day. They typically come into the facility each morning, load their truck and then run a route. After the first run, they return to the warehouse and turn in any money to accounts receivable. They also unload any returned or defective products. Next, they pick up their invoices and delivery schedule from ISCs and load

their cube van. The in-town route salespersons then leave for their second run at about 1:00 p.m. The out-of-town route salespersons are assigned specific routes covering Minnesota, Iowa, and Wisconsin. Most out-of-town salespersons load their cube vans Friday night at the warehouse and leave for their scheduled routes from their homes on Monday morning. They typically spend one night on the road and return to the warehouse Tuesday afternoon. Four of the out-of-town salespersons make one-day runs on Wednesday, and then load up Wednesday evening and leave from their homes Thursday morning. They stay overnight on Thursday and return to the warehouse on Friday. The other out-of-town salespersons do not make Wednesday runs. Instead, they come into the office to do their paperwork, and make sales calls. They then leave for their next overnight run on Thursday morning.

Route salespersons are salaried employees and do not punch a time clock. In addition to their salary, they earn commission based on total individual sales. Entry-level salary for a route salesperson is \$560 every two weeks, going up to \$600 every two weeks after five years and \$640 every two weeks after ten years. In addition to their salary, route salespersons earn a commission of up to 3 percent of total sales for in-town route salespersons and 3½ percent of total sales for out-of-town route salespersons. According to Sales Manager Rees, the commissions are where route salespersons make their money. With their biweekly pay and commissions, route salespersons can earn \$30,000 annually at the low end and up to \$50,000 to \$52,000 annually at the high end. Route salespersons are supervised by Sales Manager Rees. He has authority to hire, fire, discipline, perform evaluations and recommend raises for the ISCs.

Over-the-Road Shuttle Drivers

There are two new drivers employed by the Employer who are called shuttle drivers, but in reality they are long-haul, over-the-road semi-truck drivers. Both are paid by the mile. They

report to Gary Grunwald. They are required to possess class B licenses, and are subject to DOT regulations and oversight.

The job of these two drivers is to haul parts to the Employer's branches. These drivers are part of the Employer's wholesale operation. One of the two drives to Appleton, Wisconsin, and the other drives to Des Moines, Iowa. When not driving, the two drivers work in the warehouse pulling parts and/or staging parts. However, according to General Manager Fagerhaugh, they spend a lot of time in their trucks, their runs are long, and they tend to get quite a bit of overtime because of their routes. Thus, it does not appear that either has much downtime to spend in the warehouse. The record contains no other evidence regarding these drivers.

WORKING CONDITIONS

Functional Integration

One of the Employer's principal arguments for its broad unit is that all of its employees are part of a team. In fact, the record does reflect a level of functional integration. That is, each job classification depends upon the others to do their jobs in order to perform their job. For instance, warehouse employees have to pull and stage the parts so that the route salespersons can deliver them. ISCs have to service customers and generate pick tickets so that the warehouse employees can pull the appropriate parts. The Employer also emphasizes that it has a policy of cross-training, but failed to provide any specific examples.

However, there are also differences reflected by the Employer's schedule of meetings. That is, weekly employee meetings are held within the different job classifications. Separate meetings are held for route salespersons, ISCs, and warehouse employees. All warehouse employees and delivery drivers attend meetings at which they discuss issues relating to the warehouse, such as warehouse safety and the proper way to pull parts. General Manager

Fagerhaugh conducts the warehouse meetings. In addition, Fagerhaugh and Warehouse Manager North hold safety meetings attended by warehouse personnel. Promotions and sales issues are not typically discussed at the warehouse meetings. Sales Manager Rees, with Fagerhaugh sometimes in attendance, holds weekly sales meetings with in-town route salespersons on Tuesday, out-of-town salespersons on Wednesday, and ISCs on Fridays. At the sales meeting they discuss target accounts, new product lines, and special promotions. Warehouse employees and delivery drivers do not attend the sales meetings.

Interchange

While there is some interchange between the employees in the petitioned-for unit and the employees the Employer seeks to include in the unit, the interchange is minimal. By interchange, I mean when employees substitute for one another due to absence. There is little to no interchange between the jobs of warehouse employee and route salesperson. When warehouse employees are short-staffed or on vacation or sick, management fills in for the warehouse people, or a warehouse employee from the other side of the business helps out. There is no evidence in the record that warehouse employees fill in for route salespersons when they are short. Route salespersons do not pull parts from the warehouse, and warehouse employees do not drive routes.

Similarly, there is little exchange between the warehouse employees and ISCs. Warehouse employees do not answer phones for ISCs. When the phones are busy, management helps cover the phones. Additionally, there is no evidence that ISCs cover for the warehouse when it is short-staffed. Additionally, it appears that ISCs are not trained on any of the machinery used to pull parts from the warehouse.

There is no evidence that the shuttle drivers on the warehouse side have any interaction with the route salespersons or ISCs.

There is some evidence of interchange between delivery drivers and in-town route salespersons. Delivery drivers are the primary replacements for in-town route salespersons when in-town route salespersons are sick or on vacation. However, the record does not reveal how often this happens. Further, the record does not reveal whether delivery drivers perform the sales functions of the route salespersons they replace. Additionally, the one shuttle driver on the retail side does cover for out-of-town route salespersons when they are sick or on vacation. However, there is no evidence concerning how often this happens, and there is also evidence that in-town route salespersons also cover for out-of-town salespersons.

The Employer argues that interchange is illustrated by its policy to promote from within, that the warehouse is the entry-level position, and that some employees have moved up to become delivery drivers and then route salespersons. The Employer gave two recent examples, Wes Poland and Nick Holubar, who were hired as warehouse employees and are now route salespersons. However, since 1999 no warehouse employees have moved into ISC positions. Moreover, no current warehouse employee used to work as an ISC or as a route salesperson.

Benefits and Other Working Conditions

All employees enjoy the same vacation, health plan, dental, holiday, and 401(k) benefits. There is a standard payday, every other Friday. The three lunchrooms, bathrooms, and two parking lots are open to all employees. Rewards such as summer barbecues and special dinners are offered to all employees. Additionally, twice a year all employees assist in the inventory process.

COMMUNITY-OF-INTEREST ANALYSIS

Legal Standard

In deciding the appropriateness of a unit, the Board considers a union's petition and whether that unit is appropriate, even though the unit requested may not be the optimum or most appropriate unit for collective bargaining. Overnite Transportation Co., 322 NLRB 723 (1996). In determining an appropriate unit, various community-of-interest factors are weighed, including: method of compensation, hours of work, employment benefits, supervision, qualifications, training and skills, job functions, integration and interchange of work functions, and history of bargaining. Id. at 724.

Route Salesperson

Route salespersons may be excluded from a unit of drivers and warehouse employees where "the employees in question are shown to be engaged in selling their employer's products and they drive vehicles and make deliveries of such products as an incident of such sales activity, they are essentially salesmen and have interests more closely allied to salesmen in general." Plaza Provision Company, 134 NLRB 910, 911 (1961).

Based on the foregoing, I conclude that the route salespersons in this case are appropriately excluded from the petitioned-for bargaining unit. While route salespersons share common benefits and personnel policies, and deliver the same products to the same customers as delivery drivers, it is clear that a primary function of route salespersons is sales. Additionally, route salespersons have minimal interchange, separate supervision, and a different basis of payment from the warehouse employees and delivery and shuttle drivers. In contrast to warehouse employees and delivery and shuttle drivers, a significant aspect of a route salesperson's job is to sell the Employer's product. The job description for route salesperson

describes two essential duties of the route salesperson as “Solicit, present product and sell to new and existing customers on a daily basis” and “Be familiar with Keystone product literature and be able to convey product information and availability to customers.” There is no evidence in the record that warehouse employees, delivery drivers or shuttle drivers are required to perform these sales duties. Additionally, the Employer clearly recognizes this distinction insofar as it holds sales meetings attended by the sales manager and route salespersons, but not attended by the warehouse employees, delivery drivers or shuttle drivers, or their supervisor. Further supporting my conclusion that route salespersons are in fact sales people with interests distinct from the bargaining unit is that, in addition to their salary, they are paid commission based on their monthly sales. This commission is a significant portion of a route salesperson’s income. In contrast, warehouse employees and drivers are paid hourly and do not receive commission.

Also significant is the lack of evidence of interchange between route salespersons and the employees the parties agree should be in the unit. There is no evidence of interchange between route salespersons and the wholesale shuttle drivers. Warehouse employees do not fill in for route salespersons, and route salespersons do not fill in for warehouse employees. Although delivery drivers fill in for in-town route salespersons and the retail shuttle driver replaces the out-of-town route salespersons, there is no evidence on how frequently this happens. While the record is not entirely clear on this point, it appears that when delivery drivers and the retail shuttle driver do run a route salesperson’s route, they do not engage in sales activities. Additionally, unlike route salespersons, the delivery drivers and shuttle drivers work in the warehouse when they are not driving, and they do not engage in sales. I acknowledge that there is evidence that warehouse employees have been promoted from warehouse employee to

delivery driver to route salesperson; however, this fact alone is not determinative in light of the sales function of a route salesperson.

The separate supervision of route salespersons further supports my conclusion. Route salespersons are supervised by Tim Rees, the sales manager on the retail side. He testified that he has the power to hire, discipline, fire, and recommend raises for two groups of employees—the route salespersons and the ISCs. In contrast, the warehouse employees and shuttle drivers are supervised by warehouse managers. While supervision of delivery drivers is less clear, according to Rees, he does not have the ability to hire, fire, or discipline the delivery drivers. Thus, even though there is commonality of benefits and some functional integration, I conclude that the specific sales function of the route salespersons, the differing supervision and methods of compensation, and the minimal evidence of interchange warrant the exclusion of the route salespersons from the unit. Esco Corporation, 298 NLRB 837 (1990) (excluding sales employees from warehouse unit); Alterman Transport Lines, Inc., 183 NLRB 18, 23 (1970) (finding separate unit of hourly paid local drivers appropriate, excluding salaried drivers); E. Anthony & Sons, Inc., 147 NLRB 204 (1964) (holding that there is a distinction between delivery drivers and route sales employees); Southern Bakeries Co., 139 NLRB 62 (1962) (excluding driver-salesmen from a unit of transport drivers).

Inside Sales Coordinators

While I recognize that the ISCs and warehouse employees share common benefits and working conditions, and that ISCs and warehouse employees interact with one another, I conclude that the lack of interchange, differing supervision, and different methods of compensation warrant the exclusion of the ISCs from a unit consisting of warehouse employees, delivery drivers, and shuttle drivers. First, ISCs and warehouse employees perform two distinct

jobs. ISCs are primarily responsible for taking customer orders over the telephone and for customer service. In contrast, warehouse employees are responsible for pulling products from the warehouse and staging products for delivery. Additionally, there is no evidence that ISCs fill in for warehouse employees when the warehouse is short-staffed, or that warehouse employees perform ISC functions when the phones are busy.

In addition, warehouse employees and drivers are separately supervised from ISCs. Sales Manager Rees supervises the ISCs, while Rees has no supervisory role for warehouse employees and little, if any, authority over delivery drivers. ISCs attend weekly sales meetings, where they discuss issues relating to telephone issues, new product lines, and specials. Warehouse employees do not attend these meetings, nor do ISCs attend warehouse employee meetings or the special training given to warehouse employees, where general safety, forklift safety, and unloading and loading are discussed.

Finally, ISCs are paid on a different basis than the employees the parties agree should be included in the unit. ISCs are paid hourly, but they are also paid commission based on total monthly sales, and the commissions constitute a significant part of their total compensation. Esco Corporation, supra.

Over-the-Road Semi-truck Drivers

Contrary to Petitioner, I will include in the unit the position of over-the-road truck driver. The main reason that I do so is that the functions of that position are virtually indistinguishable from other delivery drivers sought by Petitioner. Moreover, at least some of the drivers sought by Petitioner are subject to DOT oversight and regulation, as are the over-the-road semi-truck drivers. I recognize that the method of payment for semi-truck drivers (who are paid by the mile) differs from the hourly pay schedule of delivery drivers sought by Petitioner—but in view

of the fact that the semi-truck drivers have established routes, it does not appear that their pay varies significantly week to week.

Employer Contentions

As contended by the Employer in its brief, I recognize that there is a degree of functional integration among the warehouse employees/drivers and the ISCs and route salespersons. Nevertheless, that functional integration does not prevent the Employer from holding separate meetings on a weekly basis for each of the three groups. At these meetings, managers or supervisors focus on the unique functions of each group. Thus, in spite of some degree of functional integration, each group has its own duties, skills and responsibilities. In its brief the Employer also emphasizes that all three groups interact with one another. While the Employer's brief overstates the amount of interaction (I reject its claim that all ISCs are in the warehouse repeatedly on a daily basis), it is true that at least one ISC is in the warehouse on a daily basis helping warehouse employees find missing parts, and it is true that warehouse employees and route salespersons interact whenever trucks are being loaded. Moreover, as noted by the Employer, these three groups of employees share common benefits and some working conditions. However, I conclude that the separate supervision, the lack of interchange, the differing methods of compensation, and the different duties and skills warrant my conclusion that the warehouse employees and drivers are an appropriate unit for collective bargaining.

In its brief the Employer cites numerous cases that allegedly support its position. However, a review of those cases reveals that a number of them present the question of the appropriateness of a warehouse unit in a retail store and apply the standards set forth in A. Harris Co., 116 NLRB 1628 (1956). Other cases cited by the Employer relate to the inclusion of warehouse or other clerical employees in a warehouse unit. One case cited by the Employer

analyzes whether the single-facility presumption has been rebutted. In my view, none of these cases is relevant. However, three cases cited by the Employer apply traditional community-of-interest analysis. For example, the Employer argues that S & S Parts Distributor Warehouse, 277 NLRB 1293 (1985), is indistinguishable from the instant matter. After reviewing the case, I disagree. Key differences include that the employees in dispute in S & S were order takers and not involved in sales, and that they performed the same functions, had the same skills and were hourly paid like employees sought by the union. Similar distinctions exist when comparing the instant case with American Parts System, Inc., 254 NLRB 901 (1981), also cited by the Employer. The Board noted in that case that some of the job duties of the employees in dispute required them to be in the warehouse on a regular basis, and the employees in dispute had a common wage scale with other unit employees and were not paid commissions. Finally, in Barbara George Collection, 273 NLRB 1239 (1984), also cited by the Employer, there was evidence of frequent interchange and the use of shared employees among the various departments—factors not present in this case.

Thus, I shall order an election in the unit sought by Petitioner, with the addition of the long-distance semi-truck drivers. Because it appears that as a result of this decision the unit will include all truck drivers employed by the Employer (excluding route salespersons), the unit description includes all truck drivers in the employ of the Employer, and does not include specific classifications of drivers as requested by Petitioner.

6. 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 full-time and regular part-time warehouse employees and truck drivers employed by the Employer at its Minneapolis, Minnesota facility; excluding all office clerical employees, inside sales coordinators, route salespersons, and guards and supervisors as defined in the National Labor Relations Act, as amended.

DIRECTION OF ELECTION³

An election by secret ballot will 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 below, 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 military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons 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

³ 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, NW, Washington, DC 20570. This request must be received by the Board in Washington by **June 4, 2004**.

which commenced more than 12 months before the election date and who have been permanently replaced.⁴

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Teamsters Local 970, a/w The International Brotherhood of Teamsters.**

Signed at Minneapolis, Minnesota, this 21st day of May, 2004.

/s/ Robert W. Chester

Robert W. Chester, Acting Regional
Director
Eighteenth Region
National Labor Relations Board
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

⁴ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, 330 South Second Avenue, Minneapolis, MN 55401-2221, on or before close of business **May 28, 2004**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.