

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

Indianapolis, IN

BARBER & ROSS COMPANY
Employer

and

Case 25-RC-10250

LOCAL UNION NO. 135,
CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN
AND HELPERS, INDIANAPOLIS, INDIANA, and
AIRLINE EMPLOYEES in the STATE OF INDIANA,
a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS¹
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held August 23, 2004, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. ISSUES

The Petitioner, Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, Indianapolis, Indiana, and Airline Employees in the State of Indiana, a/w International

¹ The names of the Employer and Petitioner were amended at hearing to correctly reflect their current legal names.

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

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Brotherhood of Teamsters (herein referred to as the Petitioner or the Union) seeks an election within a unit comprised of truck drivers and truck driver helpers employed by Barber & Ross Company (herein referred to as the Employer) at its facility located in Knox, Indiana. The Company currently employs approximately five drivers and two helpers at the facility.

The Employer, however, contends that the only appropriate unit is one which includes all production and maintenance employees in addition to the truck drivers and truck driver helpers. According to the Employer, the only appropriate unit would be comprised of approximately 120 employees.

II. DECISION

For the reasons discussed in detail below, including the fact that the truck drivers and truck driver helpers enjoy a community of interest apart from production and maintenance employees, it is concluded that truck drivers and truck driver helpers employed at the Employer's Knox, Indiana facility constitute a unit appropriate for purposes of collective bargaining.

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

All full-time and regular part-time truck drivers and truck driver helpers employed by the Employer at its Knox, Indiana facility; BUT excluding all production and maintenance employees, shipping and receiving employees, office and clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately seven (7) employees for whom no history of collective bargaining exists.

III. STATEMENT OF FACTS

A. Overview of Operations

The Employer has operated its Knox, Indiana facility since 1985, and it is engaged in the manufacture of custom windows, doors and trim for the construction industry. Some of the products manufactured include wood windows, casement and vinyl windows, custom windows, exterior and interior doors, and trim. The Employer transports finished product from the facility to customer sites through its own truck drivers and truck driver helpers who operate company-owned trucks. During the nine months preceding the hearing herein, the Employer has been in the process of implementing a manufacturing process known as "Quick Response Manufacturing" (QRM), which streamlines the manufacturing process and is based upon the cross-training of employees. The record does not reflect the manner in which cross-training may occur, however, nor the impact, if any, of the QRM manufacturing process upon the dispute at

issue herein. Although the record does not describe the production processes in detail, it does indicate that the production of a product is not begun until a delivery date for the product has been confirmed with the customer. Completed product is loaded onto Company trucks by dock employees, who are also referred to as shipping helpers. The Employer delivers about 90% of its finished products, while the rest of the products are picked up by customers at an outlet store located at the Employer's facility.

The company's General Manager oversees the operations at the facility. Reporting to the General Manager are a Business Operations Manager, a Human Resource Coordinator, a Manufacturing Engineering and Quality Manager, a Production Manager, and a Financial Manager. There are five Production Supervisors³ who oversee various production lines, and there are thirteen group leaders reporting to these Production Supervisors.⁴ It appears that the group leaders report to the Production Supervisors who report to the Production Manager. According to the General Manager, currently there are a total of 170 individuals employed at the Employer's facility, including managers and supervisors. There are approximately 113 production and maintenance employees, plus five drivers and two helpers.⁵

³ At hearing the parties stipulated that Production Manager Frasure and Production Supervisors Charlie Tunnis, Linton Savage, Andrew Kulpa and Danny Griffin are supervisors within the meaning of Section 2(11) of the Act. The parties also stipulated that an individual named Robert Coffin, whose title is not identified in the record, is also a statutory supervisor. All of these individuals are identified as "Salaried Supervisors" on Employer Exhibit 4.

⁴ Although no group leaders exist among the drivers and helpers, group leaders work throughout the departments which comprise the production and maintenance areas of the plant. The Employer seeks to include these group leaders in the bargaining unit which it asserts is appropriate, alleging that they are not supervisors within the meaning of Section 2(11) of the Act. According to the undisputed testimony of the General Manager, these group leaders do not possess the authority to hire, fire, transfer employees, lay-off, recall, promote, adjust grievances, discipline, approve vacation or sick leave, or effectively recommend to management any of the previously mentioned actions. Thus, it does not appear that the evidence is sufficient to establish that the group leaders are supervisors within the meaning of Section 2(11) of the Act. Since, however, it is determined herein that the petitioned unit is appropriate for purposes of collective bargaining, and no group leaders exist in that unit, it is not necessary to make a final determination concerning the supervisory status of group leaders.

⁵ While the General Manager testified that there were approximately 113 production and maintenance employees (excluding the seven contested positions), the Employer, in its brief, states that there might be as many as 135. According to the brief, the 135 number includes 13 employees in the insulated glass department and 13 employees in the glass department. However, it appears from the record that there is only one glass department with 13 employees (see Employer's Exhibit 5). In addition, there was testimony that the Employer recently hired two additional drivers but the record does not reflect when they will begin employment, and it is not known whether the Employer's figures include these new hires. Therefore, it appears that the 13 glass employees are included twice in the proposed 135 figure, and the unit proposed by the Employer is closer to 113 or 115.

There is one Human Resource Department which oversees all employees' benefits and compensation. There is one employee handbook that applies to all persons at the facility. All drivers and helpers are hourly employees, and are paid overtime after 40 hours a week, at time and a half rate, just as other hourly employees. All hourly employees are paid on a weekly basis and are paid by either check or direct deposit. All hourly employees enjoy the same benefits, such as vacation, sick leave, leave of absence, family medical leave, a medical plan, and life insurance. The Employer offers the same new-employee orientation to all employees. The performance evaluation process is the same for all employees. There are evaluations after 90 days of employment, after three months, after six months, and annually thereafter. Drivers are subject to United States Department of Transportation (DOT) regulations, which require random drug testing and a work schedule that does not exceed 14 hours a day. The employee handbook also provides for random drug testing for all employees. However, the Human Resource Coordinator testified that she has no knowledge that random drug testing has ever been administered to production and maintenance employees, and the record further indicates that the Employer does not subject production employees to drug testing when they perform driving functions.

B. Drivers and Helpers

The drivers and helpers are directly supervised by the Business Operations Manager, who also supervises a logistics area, quoting area, customer service area, field services area, and one employee who works in the outlet store. It appears from the record that drivers, helpers, and logistic clerks (also referred to as customer service clerks), are members of the logistics area.⁶ The Employer currently employs three drivers who possess a "Class A" commercial driver's license (CDL) and two drivers with a "Class B" CDL. As previously mentioned, the record also indicates that the Employer recently hired two additional drivers whose employment had not begun at the time of the hearing. The Employer hired these drivers from outside applicants after advertising the positions in the newspaper; there is no evidence that the positions were posted within the production plant, or that production and maintenance employees were otherwise provided the opportunity to apply for the positions. As previously mentioned, there are currently two helpers, and there are two customer service clerks who schedule deliveries. The record does not reflect the number of other employees who report directly to the Business Operations Manager within the areas she oversees.

The drivers drive company-owned trucks to deliver the Employer's finished products to customers, and also pick up items and materials from suppliers for use in the production process. The helpers assist drivers in unloading the trucks when deliveries are made. Occasionally a

⁶ The record is unclear concerning the functions performed by the logistics and customer service areas. Further confusing the matter is the fact that a review of a departmental list provided by the Employer contains a Customer Service Department and a Drivers/Helpers Department, but no Logistics Department.

driver is assigned to work as a helper for another driver. However, the record does not indicate the frequency with which this occurs. The finished products are loaded onto the trucks by approximately four shipping helpers who are overseen by a group leader. Shipping helpers use a company-produced document which outlines the order in which deliveries are scheduled to be made each day, and they load the truck with merchandise in the inverse order in which it will be delivered. Copies of this delivery document are provided to the drivers after the trucks are loaded. The record does not reflect the times of the day that trucks are loaded. It appears, however, that trucks are loaded the day prior to delivery. Almost daily, two trucks are loaded for deliveries to the greater Chicago area, and one truck is loaded for deliveries in the area of Indianapolis, Indiana on Mondays, Wednesdays, and Fridays. The drivers pick up glass two to three times a week from a supplier in Indianapolis; interior doors from a Michigan supplier about once a week; and interior trim pieces from a supplier in Munster, Indiana about once a month.

Drivers and helpers generally begin their workday between 2:30 A.M. and 4:00 A.M. Occasionally drivers will have a later starting time such as 7:00 A.M. due to a delivery scheduled for a location that has a noise ordinance which limits the time of day that deliveries may occur. Drivers and their helpers record their arrival and departure times on a time clock located near the shipping area, and do not have access to other areas of the Employer's facility prior to 6:00 A.M. The production plant and other areas of the facility are unlocked at 6:00 A.M. Therefore, drivers and helpers cannot access the Employer's break room or restrooms before leaving the facility for their first delivery of the day. The time clock located near the shipping area is only used by drivers, helpers, and logistics employees. These employees enter the facility through the dock area, also referred to as the shipping area. The workdays of drivers and helpers vary, and are determined by the number and locations of deliveries each day. According to the Employer, it makes an effort to comply with DOT regulations which require that drivers not work in excess of 14 hours a day. Drivers and helpers are provided uniforms after they complete 90 days of employment; however the use of these uniforms is apparently not mandatory.

As mentioned above, the Business Operations Manager supervises the drivers and helpers. However, before approximately August 6, 2004, there were no management representatives at the facility prior to 6:00 A.M. Effective August 6, 2004, after a meeting held by management with all of the drivers and helpers, the Employer has assigned on a rotating basis, a manager or supervisor to be present in the dock area each day at 3:00 A.M. These rotating managers/supervisors work in other areas of the facility, but visit the dock area to provide maps or directions to drivers, and to answer questions they may have. Also within two weeks prior to the hearing the Employer placed a bulletin board in the shipping area where the drivers and helpers work.

According to the Employer's records, drivers and helpers are assigned to Department No. 31, titled "Drivers/Helpers." At hearing, the Employer provided a list of all department numbers and their corresponding titles, along with the names of employees within each department. These lists indicate there are only six employees in Department 31. However, the Human Resource Coordinator testified that one driver helper was mistakenly listed within

Department No. 62- Milling, because he was hired initially in Milling and was transferred to the helper position in February 2004.⁷

The Employer implemented a new wage scale for each job classification within its facility on July 13, 2004. A job classification and corresponding wage scale exists for Master CDL A Driver, CDL A Driver, CDL B Driver, and Non CDL Driver/CDL B Trainee. The wage scale for driver helpers is the same as that for shipping helpers. The record does not reflect the actual wage rates earned by drivers and helpers; it contains only the wage range which corresponds to their job classification. The record indicates that there is currently one Master CDL A driver, who may earn between \$15.50 per hour and \$18.75 per hour. There are currently two CDL A drivers, who may earn between \$13.00 per hour and \$15.25 per hour. There is one CDL B driver, who may earn between \$12.00 per hour and \$14.00 per hour. There is one CDL B trainee who may start at \$11.25 per hour and may earn up to \$12.00 per hour. The driver helpers and shipping helpers may earn between \$8.60 per hour and \$13.50 per hour. The only evidence of a current wage rate came from a driver helper who testified that his wage rate was \$8.91 per hour after six years of employment.

The record does not contain the job qualifications of or requirements necessary for hire into any of the driver and helper classifications, or for production and maintenance positions.

It appears that although drivers and helpers are welcome to attend company outings with other employees, sometimes they do not receive advance notice of these outings, or do not attend them. Recently the Employer sponsored an employee activity at Indiana Beach. According to a CDL A driver, he learned of this activity when he stopped by the office of the Assistant to the Human Resource Coordinator one day, and she told him about it. He stated that he does not go inside the facility often and that if there exists a program known as "employee of the month," he is unfamiliar with it. A driver who had worked for the Employer for 10 years prior to his separation on about August 5, 2004, testified that he first learned of the Indiana Beach outing after it had already occurred. Similarly, a helper also testified that he learned of the Indiana Beach activity after the fact.

C. Production and Maintenance Employees

Production employees begin their workday at 6:00 A.M. and end their day at about 2:30 P.M. They are supervised directly by Production Supervisors, and indirectly by the Production Manager. There is little record evidence concerning the production process involved in the manufacture of the Employer's products, or concerning the specific tasks performed by production and maintenance employees. According to the Employer's records, production and maintenance employees exist within a number of departments which include Casement, Cladding, Composite, Euro-Mould, Exterior Door, Field Repair, Fixed Window, Installation, Insulated Glass, Interior Door, Maintenance, Material Handling, Milling, Prime, Quality,

⁷ The Employer offered no explanation why this transfer was not reflected in the report except to state that since the report was prepared some employees have left employment, and there are some employees classified in the wrong departments.

Receiving, Safety, Screen, Shipping, Trim Pull, Vinyl, Wood Window, and Department Number 20 (which includes the group leaders).⁸ According to the Employer, there are approximately 116 employees in these departments and 33 job classifications.

Production and maintenance employees have a swipe-card time clock located close to their work areas and the employee entrance of the facility. Apparently all employees, except for drivers, helpers and logistic employees, use this time clock. Production and maintenance employees, use the employee entrance of the facility to enter the building. A safety committee meets every month to discuss workplace injuries. The committee is composed of various production and maintenance employees, and the Human Resource Coordinator, but no drivers and helpers participate in this committee at this time. The Employer does not provide uniforms to the production and maintenance employees.

The Employer's new wage scale assigns a wage rate to production and maintenance employees based upon their job classification rather than the department in which they work. The record fails to identify the number of employees in each job classification, or the actual wage rates that employees earn. According to the Human Resource Coordinator, most production and maintenance employees occupy the classifications of Operator, Assembler and Builder. However, the record does not identify the job qualifications or requirements for these classifications, or the number of employees who currently occupy these positions. According to the wage scale, production and maintenance employees' wages may range between \$7.50 per hour and \$25 per hour depending upon the job classification. On the low end are the Operators, who may earn between \$7.50 per hour and \$13.97 per hour; Assemblers, who may earn between \$7.50 per hour and \$11.90 per hour; and Builders, who may earn between \$7.50 per hour and \$12.65 per hour. On the high end are the Group Leaders A Team, who may earn between \$15.70 per hour and \$16.63 per hour; and CNC Operators, who may earn between \$15.00 and \$25.00 per hour.

D. Employee Interchange

Several Employer witnesses testified about alleged employee interchange between drivers/helpers and production/maintenance employees. The General Manager testified generally that drivers help load their trucks upon occasion, and that production employees are regularly assigned to work as drivers or helpers.⁹

⁸ According to the Human Resource Coordinator, the unit sought by the Employer excludes employees in the following departments: Department No. 3-Customer Service, 5-Engineering, 7-Executive, 9-Finance, 11-Human Resources, 13-Information Technology, 15-Purchasing, 17-Store, 19-Sales, 79-Salary Supervision, and No. 80-Scheduling. According to Employer's Exhibit 5, there are approximately 71 employees in the above departments.

⁹ The General Manager and Human Resource Coordinator also testified that upon occasion persons who the Employer has excluded from its proposed unit have experienced interchange with drivers or helpers. Evidence that persons excluded from the Employer's proposed unit experience interchange with drivers or helpers, however, is irrelevant to determine whether the drivers/helpers share a community of interest with employees who are included within the

The Business Operations Manager also testified that when the Employer has two to three trucks making deliveries in a day there are enough employees to staff the deliveries. However, when four or five trucks make deliveries, additional employees from other areas are needed to assist the drivers. She alleged that this happens twice a week during the Employer's busy season which extends from April through September. No documents substantiate this statement, however. In response to leading questions, the Operations Manager also stated that she works closely with the Production Manager to coordinate the use of production employees as drivers or helpers, and to coordinate the transfer of drivers and helpers to work in production areas.

One current Class A driver testified that in his two years of employment as a driver he has never worked in the shipping area or in any production area. He also testified that on a regular basis an employee from production or shipping is assigned to work with him as a helper. A former Class A driver who worked for the Employer for 10 years until August 2004 testified, however, that he could not recall more than five instances in his entire ten years of employment that he drove with a helper who was a production employee. He also testified that during his employment he never worked in the dock or in production areas. A current helper testified that during the past two years he has never worked in the dock area or in production. This helper further explained that during the first couple of years of his almost seven-year tenure with the Employer, he was occasionally transferred to work in production, but since then he has been sent home without work on many occasions rather than being assigned production work, and for the two years immediately preceding the hearing he was never assigned production or maintenance work.¹⁰

The Employer offered into evidence three lists which the Operations Manager authored in preparation for the hearing which contain the names of production and maintenance employees who have allegedly experienced interchange with drivers or helpers, and vice versa. The first list contains the names of drivers and helpers who have allegedly worked in production areas. Testimonial evidence indicates, however, that two drivers on this list did not perform production work as part of their regularly scheduled work assignments. Rather, the drivers worked in the dock and shipping area due to medical restrictions which precluded their driving. One driver performed such "light duty" work for approximately six weeks in 2003, and the other for about two years before his retirement in June 2004. According to the Operations Manager, a Class B driver who was hired in June 2004 has worked on the dock "probably" about two times a week. Another current B driver, also hired in June 2004, has also allegedly worked on the dock about once a week. Additionally, a former helper who left the company about a year prior to the

Employer's proposed unit. Thus, testimony of the General Manager that upon occasion sales employees make deliveries which drivers are unable to make due to DOT work hour restrictions, and testimony of the Human Resource Coordinator that the Maintenance Foreman (who possesses the power to hire and fire) has worked as a helper, are irrelevant to the issue at hand.

¹⁰ The helper stated, however, that for a period of about two weeks he was assigned to ride with a driver who is not one of the Employer's regular drivers. The record does not indicate whether this occurred just one time, or the identity of the driver.

hearing, allegedly worked in the dock area on an "as needed" basis. The record does not identify the duties that drivers and helpers performed when they allegedly worked in the dock area. The Operations Manager also testified that for two months prior to the hearing, a helper was assigned to work in the machining area of the production plant two days a month. This individual became a helper in February 2004, and prior to that time, he had been a production employee. He changed job classifications pursuant to an internal job posting, and received a wage increase when he was granted the helper job. With the change in job title, he also changed supervision. This employee is the only one of the seven current drivers and helpers who has two time cards: one time card located at the production area time clock and the other one at the shipping area time clock.

In respect to production employees working as drivers (the second list proffered into evidence by the Employer), the Business Operations Manager testified in general terms that some production employees who possess CDL licenses are regularly used as drivers. According to this Manager, one employee in the double hung production line¹¹ possesses a Class A CDL license and he worked as a driver one day in June and one day in July of this year.¹²

A third list purportedly shows production employees who have worked as helpers. Two of the employees are not production and maintenance employees, but rather individuals who are excluded from the Employer's proposed unit, and for this reason they are not relevant examples of interchange.¹³ The remaining three production employees either worked as helpers only during two months preceding the hearing, or the record fails to identify the period of time during which they had worked as helpers. The document also lists five former production employees who allegedly worked as helpers about once a month. However, the record fails to establish the termination dates of these employees, or the period of time during which they allegedly work as helpers.¹⁴

¹¹ The record does not indicate the production department in which this line exists.

¹² According to the Operations Manager, only one production employee has a time card both in production and dock areas of the plant. He is a customer service clerk, a classification which the Employer has excluded from its proposed unit. Therefore, testimony concerning helper work this individual may have performed is not relevant to a determination whether drivers/helpers share a community of interest with persons included within the Employer's proposed unit. Likewise, testimony about a sales employee who may have worked as a driver in 2002 on an unknown number of occasions, and of a former logistics manager who also allegedly worked as a driver in 2002, are irrelevant for the same reason. Lastly, testimony that a former logistics employee who acted as a helper about two times a month, for an unknown period of time in 2001 and in 2004, is also of no evidentiary value.

¹³ One Maintenance Foreman and one customer service clerk have allegedly worked as helpers.

¹⁴ Testimony also exists that some service employees who are in Department No. 38 - Field Repair, also performed the work of drivers and helpers. However, these service employees did not drive trucks or ride with drivers. They only met drivers at a delivery location to pick up

According to the Employer, it does not maintain records of employee interchange. The Business Operations Manager testified that the only records which may reflect interchange are time cards. According to her, if the time card of a production employee shows a start time of 3:00 A.M., one may assume the employee worked as a driver or helper that day. Likewise, if a time card of a driver or helper shows a starting time of 6:00 A.M., one may assume that s/he worked as a production employee that day. The Employer entered into evidence a sample of time cards for the period of late May, June, July and early August of 2004 – approximately 13 weeks. Of the approximately 113 production and maintenance employees, the time cards show that only four employees within the Employer's proposed unit have worked as drivers or helpers during the past 13 weeks.¹⁵ Two of the four employees are dock or shipping employees, and the other two work in a production area. These four employees spent a total of nine days working as drivers or driver's helpers during the 13 weeks. Assuming that the four employees worked five days each week, the record reflects that the four employees worked as drivers or helpers a total of 9 days out of potentially 260 days, or only 3% of the time. More significantly, only a mere 3.5% of the total members of the bargaining unit proposed by the Employer worked in the capacity of driver or helper during this sample time period.

The timecards of the drivers and helpers show that during these 13 weeks, one helper worked one day in production; one driver worked one day in the dock area; and another driver worked five days on the dock. The driver who worked five days on the dock is designated as a trainee and was hired in June 2004. The record, however, does not indicate the reason(s) this driver worked on the dock during these days, and whether this work was related to a training period. Again, assuming that employees work five days each week, the timecards reflect that the three drivers and helpers worked in production a total of 7 days of potentially 195 days, or 3.5% of the time.

IV. DISCUSSION

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

parts from the drivers that they needed to perform their service related work. Thus, this is not illustrative of employee interchange.

¹⁵ This excludes the time card of a Maintenance Foreman who, according to the Human Resources Coordinator, has the authority to hire and fire. Based upon this undisputed testimony, it is concluded that this employee is a supervisor within the meaning of Section 2(11) of the Act, and thus, is excluded from this data.

inquiry into the appropriate unit ends." Overnight Transportation Co., 331 NLRB 662, 663 (2000).

In determining an appropriate unit, the ultimate question is whether the employees share a sufficient community of interest to warrant their joinder within one unit. See Alois Box Co., 326 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994). In determining whether employees share such a community of interest, the Board weighs a variety of factors, including similarities in wages or method of compensation; similar hours of work; similar employment benefits; similar supervision; the degree of similar or dissimilar qualifications, training, and skills; similarities in job functions; the amount of working time spent away from the facility; the integration of work functions; the degree of interchange between employees as well as the degree of employee contact; and the history of bargaining. See Action Automotive, 469 U.S. at 494-97; Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

In addition, the Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned employee classifications. Bartlett Collins Company, 334 NLRB 484 (2001) and cases cited therein.

The Board has acknowledged that truck drivers often have a "dual community of interest," with certain factors supporting their inclusion in the same unit as other plant employees, and certain factors favoring their representation in a separate unit. Home Depot USA, Inc., 331 NLRB 1289 (2000), citing Pacemakers Mobile Homes, 194 NLRB 742, 743 (1971).

In this case both production/maintenance employees and drivers/helpers are paid on an hourly basis, are subject to the same work rules and Employer policies (excluding its drug testing policy), receive the same new employee orientation, and are eligible for the same fringe benefits. However, since the drivers and helpers have separate supervision from most production and maintenance employees; work in a separate area; possess different skills and perform different work functions; spend most of their time on the road making deliveries; punch a different time clock; work different hours; experience little contact with other employees; and have insubstantial interchange with production and maintenance employees, it is concluded that truck drivers and driver helpers share a sufficient community of interest to warrant their inclusion within a unit apart from production and maintenance employees. Moreover, the preponderance of record evidence also indicates that drivers and helpers lack a sufficient community of interest with production and maintenance employees to require their joinder within one unit. Under similar circumstances as those present herein, the Board has held that truck drivers comprise a functionally distinct group which may constitute a separate appropriate unit when, as here, a union seeks to represent them separately; there is no bargaining history on a broader basis; and no other labor organization seeks to represent them in a broader unit. Mc-Mor-Han Trucking Co., Inc., 166 NLRB 700 (1967). See also, Burnet-Binford Lumber Company, Inc., 75 NLRB 421 (1947) (finding a unit of truck drivers and helpers appropriate for collective bargaining).

Little evidence was presented by the parties concerning the actual wages earned by and the minimum qualifications required of the employees whose unit placement is in dispute. There is no evidence regarding any individual employee's actual wage rate with the exception of one

driver helper who identified his hourly wage. The only evidence proffered by the Employer regarding wages is the wage range which applies to each job classification. Therefore, a comparison of the wage rates earned by members of the petitioned unit and those of the proposed unit is difficult to make. It is apparent, however, that the drivers' lowest wage rate of \$11.25 per hour is much higher than the lowest wage rate of \$7.50 per hour assigned to production employees. Even driver helpers have a starting wage rate at \$8.60 per hour, which is higher than the starting wage rate in the production plant. Thus, it appears that drivers and helpers generally earn a higher wage than production employees. There is also little evidence regarding the minimum qualifications required for entry into the contested classifications. While drivers are required by federal law to possess a commercial driver's license, production and maintenance employees are not. Other minimum qualifications are not known. The Employer asserts that since the helpers share the same wage scale as shipping helpers this is evidence of a shared community of interest. However, there are only three to six¹⁶ shipping helpers, and a wage scale shared between such few members of a proposed 113-member unit is hardly sufficient to create a community of interest between the other 107 production/maintenance employees and the drivers/helpers.

In addition, as outlined above, a considerable number of differences exist between the disputed groups of employees. The drivers and helpers have different work hours than production and maintenance employees. They report to work at different times, to a different area, and have already left the facility to make deliveries before production and maintenance employees report to work. The drivers and helpers utilize a separate time clock, and do not have access to the break room and rest rooms which are used by production and maintenance employees. In addition, there is little evidence that the two groups of employees interact during the normal course of their workdays. The drivers and helpers often work 14-hour days, and their workday ends at varying times. Because the work schedules of the drivers/helpers and the rest of the employees do not overlap, the drivers and helpers do not have significant interaction with other employees. Even though there is some testimony that drivers and helpers sometimes help shipping employees load the trucks, there is no evidence concerning how often this happens, or for what period of time during a workday. Therefore, this evidence of employee contact is insufficient to require the joinder of the two groups into one unit. The Employer argues that since shipping helpers load the trucks, and the drivers and helpers unload them, this is evidence that they perform the same work. Again, while the two groups of helpers may share some similar duties, other functions performed by the shipping employees are not known and may differ from the duties of driver helpers. For example, the testimony of the Human Resource Coordinator indicates that one employee classified as a shipping helper is a "checker/packer," which suggests the individual performs functions other than loading trucks. Even assuming, *arguendo*, that the duties of shipping helpers are identical to the duties of the two driver helpers, this factor alone is insufficient to warrant the inclusion of the 107 other production/maintenance employees who perform different functions, into the unit of drivers and driver helpers.

¹⁶ While Employer Exhibit 5 lists three shipping helpers, the Human Resource Coordinator indicated that there are 5-6 such helpers, the remainder of whom were misplaced in different departments in the exhibit.

Although the Employer argues that the drivers and helpers share common supervision with other employees, there was clearly insufficient evidence to establish that anyone but the Business Operations Manager effectively supervises the drivers and helpers. Only until recently did the Employer begin rotating supervisors and managers to be present at 3:00 A.M. to assist drivers and helpers in the morning. However, there is no evidence that these rotating supervisors approve time off, issue discipline, or in any other way actually perform supervisory functions in respect to the drivers or their helpers. In addition, although it is not entirely clear from the record, if one assumes that driver/helpers share common supervision with shipping employees (who may be members of the logistics area supervised by the Business Operations Manager), once again, common supervision shared by only a five to six members of the Employer's proposed unit is insufficient to support a finding of a community of interest among all members of the proposed and petitioned units. Moreover, the presence of shared supervision is but one factor to be considered, and is not necessarily determinative of unit determinations. Novato Disposal Services, Inc., 330 NLRB 632 (2000), citing, Mc-Mor-Han Trucking Co., Id. In contrast, the record clearly establishes that all but a few production and maintenance employees are supervised on a daily basis by Production Supervisors who exercise no regular authority over drivers and their helpers.

In respect to interchange between drivers, helpers, and other employees, the evidence is insubstantial. The Employer only produced time cards reflecting employee interchange for 13 weeks between May and August of 2004, and it is not known whether this period is representative of the full year or of other years. Moreover, the data lacks context, and it is therefore difficult to draw conclusions from the figures. The data shows that four employees out of the approximately 113 production and maintenance employees worked as drivers and helpers during this time frame. Moreover, these employees worked as drivers or helpers a mere total of 9 days during these 13 weeks. Thus, during the 13-week period four production employees spent only 3% of their work time performing driver/helper functions, and it is not known whether this interchange is typical of past periods. Without a meaningful context in which to evaluate the partial 2004 data, it cannot be concluded that the number of production and maintenance employees who worked as drivers and helpers is substantial. See, New Britain Transportation Co., 330 NLRB 397 (1999) (where 200 instances of interchange in a five-month period between a unit of 35-38 employees and two other groups totaling 155 employees, not found "substantial" because the figure lacked context).

The Employer also supplemented its documentary evidence of interchange with testimonial evidence. However, most of this testimony was general, vague, and lacking in context. In addition, both the testimonial evidence and the lists proffered by the Employer with purported to show examples of employee interchange are inadequate. As mentioned previously, both the lists and testimony concerned several employees who work in the Customer Service and Sales Departments which are departments excluded by the Employer from its proposed unit. The evidence also concerned a Maintenance Supervisor who is also excluded from the Company's proposed unit. Therefore, examples of interchange involving persons excluded from the Employer's proposed unit are of no evidentiary value to assess interchange between members of the petitioned and proposed units. The record also contains a few examples of former employees who worked as helpers at one time or another, but the record fails to identify the

period of time this alleged interchange occurred, or even the period of time during which these employees were employed.

There was also insufficient evidence of drivers and helpers performing work in the production and maintenance areas to require their joinder within a single unit. Testimonial evidence indicates that two drivers on light duty were transferred to the shipping department on a temporary basis when their medical conditions prevented them from driving. This is not, however, interchange which occurs on a regular basis as a normal part of the assigned duties of drivers. Therefore, its evidentiary value is minimal. There was also testimony that one of the recently hired drivers might be assigned to work in the shipping area in the future. The Board has held that the “possibility” that drivers may be assigned to work in another area is not sufficient evidence to support a finding of substantial interchange. Home Depot, Id. In addition, although there was testimony that a current driver helper works in production areas of the plant about two days a month, the time cards do not corroborate this assertion. In the 13-week period covered by the time cards, the helper worked only one day in the production plant. Finally, the fact that recently the Employer did not post in the production plant any notice of two vacancies in driving positions, but recruited applicants from outside the Company when qualified applicants apparently exist in the plant, also tends to negate the Employer's assertion that a community of interest exists between the contested groups of employees.

The Employer's reliance upon Kalamazoo Paper Box Corp., 136 NLRB 134 (1962), NLRB v. Southern Metal Services, Inc., 606 F.2d 512 (5th Cir. 1979), and Olinkraft, Inc., 179 NLRB 414 (1969), is misplaced. In Kalamazoo and Olinkraft the petitioning unions sought to sever a unit of truck drivers from an existing production and maintenance unit. The Board held in both cases that a truck driver unit did not constitute a functionally distinct group with special interests sufficiently distinguishable from those of the employers' other employees to warrant severing them from the overall unit. In Kalamazoo, the truck drivers performed trucking duties only half of their work time, while the other half of the time they performed work alongside production employees. Similarly, in Olinkraft the drivers spent about 20% of their work time performing non-truck driving duties. In the present case, the truck drivers and helpers spend most, if not all of their work time driving the trucks and making deliveries to customers. Moreover, there is no history of collective bargaining in a broader unit in the case at hand. In Southern Metal Service, Inc., 606 F.2d 512 (5th Cir. 1979), the Fifth Circuit Court of Appeals enforced a Board order finding which found that two truck drivers shared a sufficient community of interest with production and maintenance employees to justify their inclusion in one unit, but this case does not provide a sufficient factual basis for any useful comparison to the present case. The Court, applying a very narrow standard of review, simply held that the inclusion of the truck drivers did not justify denial of enforcement of the bargaining order. Also, in that case the Board found, *inter alia*, that the union's desire to represent the truck drivers in the broader unit tilted the balance toward their inclusion in the production and maintenance unit. In the present case, the Union does not seek to represent production and maintenance employees.

The Employer also argues that a major factor weighing in favor of a facility-wide unit in this case is the fact that the Union seeks to include helpers in its petitioned unit. The Employer apparently argues that the Board is more likely to find a driver-only unit to be appropriate, than a combined driver-helper unit. The Employer cites no case law in support of this assertion,

however. In reality, the Board has not only found driver units appropriate, but also driver-helper units. See, for example, Burnet-Binford Lumber Company, Id. (a unit of truck drivers and helpers found to be appropriate), Novato Disposal Services, Inc., Id. (a unit of drivers, drivers' helpers, recycle laborers, bailers and buy-back attendants found appropriate), Overnite Transportation Company, 322 NLRB 347 (1996) (a unit of drivers and dock workers found appropriate). The Employer also argues that the present case is distinguishable from Home Depot, Id., in which the Board found appropriate a unit of truck drivers and dispatchers who drove, because that case did not involve driver helpers. In Home Depot, the Board's finding was based upon evidence that a sufficient community of interest existed between the drivers and dispatchers to constitute an appropriate unit. Similarly, in the present case substantial evidence indicates that a sufficient community of interest exists between drivers and helpers to warrant their inclusion within a unit apart from production and maintenance employees. Accordingly, it is concluded that a unit of the Employer's truck drivers and truck driver helpers is appropriate for purposes of collective bargaining.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, Indianapolis, Indiana, and Airline Employees in the State of Indiana, a/w International Brotherhood of Teamsters.

VI. NOTICES OF ELECTION

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

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **September 30, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by October 7, 2004.

SIGNED at Indianapolis, Indiana, this 23rd day of September, 2004.

/s/ Rik Lineback

Rik Lineback
Regional Director
National Labor Relations Board
Region 25
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