

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 33

HECKMAN HEALTH CARE

Employer

and

Case 33-RC-4831

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN &  
HELPERS LOCAL 279 affiliated with INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner<sup>1</sup>

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer is engaged in the retail and non-retail sale, servicing and delivery of home medical supplies and equipment in the central Illinois area. The Petitioner 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 full-time and regular part-time driver/service technicians. A hearing officer of the Board held a hearing and the parties filed briefs with me.

The parties disagree on only one issue: whether the unit must also include the service manager. Although both parties agree that the service manager is not a supervisor, the Petitioner contends that its requested unit limited to the three driver/service technicians and excluding the service manager is appropriate. The Employer, however, contends that the appropriate unit must also include the service manager because of the shared community of interest or because the service manager is a dual function employee.

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<sup>1</sup> The Petitioner's name appears as amended at hearing.

I have considered the evidence, arguments and briefs presented by the parties on this issue. As discussed below, I have concluded that the service manager shares a sufficient community of interest with the petitioned-for employees so as to require his inclusion in the bargaining unit.

### **I. OVERVIEW OF OPERATIONS**

The Employer sells, leases, services, repairs, and delivers home medical equipment and supplies, including bottled oxygen, oxygen tanks, oxygen concentrators, wheelchairs, hospital beds, and nutrients to patients in their homes as well as to doctors' offices and hospitals. The Employer's main offices and warehouse are located in a single facility located on West Imboden Drive in Decatur, Illinois. The Employer also operates a separate retail store located on East Eldorado in Decatur. The warehouse is the only facility at issue here.

From its warehouse, the Employer services customers located throughout central Illinois, in an area ranging from Clinton, Illinois, in the northwest to Effingham, Illinois, in the southeast-a driving distance of approximately 117 miles. The Operations Manager<sup>2</sup> oversees the Employer's day-to-day operations at the warehouse and directly supervises the three petitioned-for driver/service technicians<sup>3</sup> and the service manager, all of whom work out of the warehouse.

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<sup>2</sup> The parties stipulated that the Operations Manager is a supervisor within the meaning of the Act.

<sup>3</sup> One of the three driver/service technicians holds the title of driver/route supervisor. The record establishes that this employee's duties do not differ from those of the other two. Therefore, any reference to the driver/service technicians will include the driver/route supervisor. The parties stipulated that these three employees are not supervisors as defined by Section 2(11) of the Act.

The driver/service technicians and the service manager work Monday through Friday, 8:30 a.m. to 5:30 p.m. During the workday, customers typically call the Employer's office to place delivery, repair, and/or equipment pick-up (i.e., "service call") orders. Non-emergency service call orders are posted at the end of each day on the two delivery boards located within the warehouse. When the driver/service technicians and the service manager report for work each morning, they immediately gather at the delivery boards, jointly review the posted service call orders, and divide them among themselves. The same driver/service technician generally takes the out-of-town routes, except on Mondays, when he does the liquid oxygen deliveries. The remaining local service call orders are then divided geographically between the Employer's other two driver/service technicians. If any of the three driver/service technicians have any questions about a particular repair order, they will typically ask the service manager about the repair. If, after discussing the repair, the driver/service technicians do not feel comfortable with making the repair in question, the service manager will travel to the customer's residence to undertake the repair himself. In such cases, the service manager customarily takes whatever other service call orders there may be in the vicinity of the repair. The service manager will also make service calls as necessary whenever one of the three driver/service technicians is absent from work or if there is an excessive number of service calls on a given day.

In addition to the posted service calls, the Employer also requires monthly checks of its customers' oxygen concentrators and bi-annual home assessments for each customer. Thus, each month, these employees perform approximately 80-100 oxygen concentrator checks and about 130-140 home assessments. Before making their daily service calls, the driver/service technicians and service manager check to see if any concentrator checks or home assessments are due to be performed in the same

geographical area as their other service calls and they will then perform those checks and assessments as well as the other service calls.

The work division process described above typically takes about 30 minutes to complete. During this time, the driver/service technicians and the service manager interact extensively, with decisions regarding the division of service calls being made by consensus. Upon completing this process, the four employees then begin individually conducting maintenance checks of the Employer-supplied vehicle they will be operating that day.<sup>4</sup> After completing these vehicle maintenance checks, they then begin individually loading their vehicles with any supplies and equipment they may need for their service calls. The few items of equipment that cannot be loaded individually are loaded by two of the employees acting in concert. In such cases, the service manager usually helps load the equipment and then must accompany the driver/service technician to the destination to help unload the equipment. Once the equipment is loaded, the driver/service technicians depart the warehouse to make their service calls. If the service manager has any morning service calls to make, he departs the warehouse at the same time as the driver/service technicians. Otherwise, he remains at the warehouse performing cleaning and repair work on returned equipment. Every Thursday, one driver/service technician also remains at the warehouse performing the same work as the service manager. This is pursuant to that driver/service technician's desire for additional training and experience in equipment repair.

The record evidence indicates that the service manager usually spends about 4 hours each workday out of the warehouse making service calls, as well as about 4 hours

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<sup>4</sup> The Employer maintains a small fleet of vehicles: two mini-vans, a regular box van, a one-ton flatbed truck, and an oxygen truck. The employees usually drive the same vehicles. The service manager and one of the driver/service technicians usually operate the mini-vans. The driver/service technician who delivers the liquid oxygen is the only employee to operate the oxygen truck; when not delivering oxygen, he usually drives the flatbed truck.

each day in the warehouse primarily performing equipment cleaning and repair duties. When the service manager is out of the warehouse making deliveries and/or service calls, he generally performs the same duties as the three petitioned-for driver/service technicians. That is, he delivers and repairs equipment, performs home assessments and concentrator checks. On the 4 days per week when the one driver/service technician is on out-of-town routes, he usually does not return to the warehouse until he completes all of his calls, sometime toward the end of the workday. The other two driver/service technicians performing more local service calls normally return to the warehouse two or three times each workday. Because of this, they usually spend somewhat more time working in the warehouse, generally 2½ to 3 hours per day.

The routine of all four employees when they are in the warehouse is generally the same. That is, after making their service calls and returning to the warehouse, all four employees unload any returned equipment they may have from their trucks. They then check it for necessary repairs, tag it, and place it for cleaning in the cleaning area of the warehouse. Thereafter, the employee who picked up the equipment, if he has the time, cleans and disinfects it. Once this is done, if the equipment is in sound condition, it is placed back into inventory in the warehouse by the same employee who picked it up. If, however, the equipment requires repair, it is usually taken by the employee who cleaned it to the repair area located immediately adjacent to the cleaning area in the warehouse. Once in the repair area, the service technician or the one driver/service technician working on Thursdays usually repairs it, though all four employees routinely make some in-warehouse repairs as well as repairs in the field. After the equipment is repaired, it is taken to the cleaning area for another cleaning—usually by the employee who repaired it—and then returned to the warehouse inventory. Any remaining time the

driver/service technicians and the service manager have in the warehouse is spent catching-up on paperwork they may have.<sup>5</sup>

Notwithstanding the routine outlined above, emergency orders and deliveries take priority over all other employee work activities. If no driver/service technician is in the area and/or able to make the call, the service manager will usually make the service call. When he does, the service manager will also make any home assessments or concentrator checks due in the same geographic area as the emergency call. The service manager and the driver/service technicians all have cell phones and throughout their workdays, the driver/service technicians routinely call the service manager with repair questions, and at the end of the day, will discuss repairs with the service manager.

## **II. SCOPE OF THE UNIT**

### **A. OVERVIEW OF APPLICABLE LAW**

Contrary to the Employer, the Petitioner contends that the service manager does not share a sufficient community of interest with employees in the petitioned-for unit and, therefore, a unit limited to the three driver/service technicians is appropriate. There is nothing in the Act that requires the unit for bargaining be the *only* appropriate unit, the *ultimate* appropriate unit or the *most* appropriate unit; the Act requires only that the unit *be* appropriate, i.e., that it insures to employees in each case “the fullest freedom in exercising the rights guaranteed by [the] Act.” *Bartlett Collins Co.*, 334 NLRB 484

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<sup>5</sup> The driver/service technicians and service manager are required to complete a variety of forms including concentrator check reports, assessment and home safety evaluations, work orders, and equipment tags with repair documentation. In addition, the Employer's driver/service technicians are required to fill-out route sheets showing the pick-ups and deliveries they make during the workday. The service manager is not required to fill out route sheets.

(2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996); and *Dezcon, Inc.*, 259 NLRB 109 (1989).

In *The Boeing Company*, 337 NLRB 152, 153 (2001), the Board explained its procedure for determining an appropriate unit as follows:

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co.*, 331 NLRB 662 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn. 2 (7<sup>th</sup> Cir. 1997). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *Bartlett Collins Co.*, 334 NLRB 484 (2000), and *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967). In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Ore-Ida Foods*, 313 NLRB 1016 (1994), affd. 66 F.3d 328 (7<sup>th</sup> Cir. 1995).

## **B. DISCUSSION OF RELEVANT FACTORS**

### **1. Wages, Hours, and Working Conditions**

All four employees are subject to virtually identical terms and conditions of employment. All four employees are hourly paid, although the rates vary. The service manager is paid \$4 per hour more than the highest paid driver/service technician, who is paid about \$2.50 more per hour than the lowest paid technician. All four employees receive a \$1 per hour bonus for each hour worked and are subject to the same mandatory overtime policy. Further, they all share the same fringe benefits, including the same insurance benefits, breaks, holidays, funeral leave, Christmas bonus, and vacation and sick day policy. In addition, all four employees are required to punch the same time clock, wear the same uniform, and are governed by the same handbook, personnel policies, and shop rules. They attend the same organizational performance meetings to discuss complaints, methods to improve customer service, and other issues.

Although, the driver/service technicians' routes vary from one another, all four employees work approximately 40 hours per week and all four employees work the same schedules. The driver/service technicians do rotate "on call" responsibilities, the service manager does not.

## **2. Supervision**

The four employees share common supervision. They are all directly supervised by the Operations Manager. They all receive annual performance evaluations on identical evaluation forms from the Operations Manager. There is no other independent supervision over the day-to-day work of these employees.

## **3. Degree of Skill and Common Function**

The driver/service technicians and the service manager possess similar skills as well as common functions. The Employer does not require any educational level beyond a high school diploma. All four employees are required to have a commercial drivers license and hazardous materials handling training and certification. The Employer's driver/service technicians and the service manager receive most of their training on the job, and they largely receive this training from one another, or from manufacturers and sales representatives. These representatives periodically come to the Employer's facility to provide all four employees with background technical information regarding the equipment that the Employer sells, leases, and/or services or may provide day-long seminars in the Decatur area. All four employees are offered the opportunity to attend the seminars, generally, however, it is the service manager and one driver/service technician who choose to attend. The service manager is also trained as a rehabilitation specialist. In this regard, approximately once per month, he helps fit a customer with cushions to improve posture and comfort while sitting in a wheelchair. The driver/service technicians are not so trained.

The functions and duties of the driver/service technicians and the service manager are substantially the same. All four employees deliver and pickup equipment; repair equipment, both in the field and in the warehouse; clean equipment and perform oxygen concentrator checks and home assessments. They perform these functions in the same manner, using the same skills, tools, and equipment. The only type of repair performed by the service manager, that is not performed by the driver/service technicians, is repair of electronic components on wheelchairs, which repairs are infrequently made, approximately twice per year. In essence, the only difference in the functions of the classifications is in emphasis; thus the service manager frequently starts his day in the warehouse making repairs and generally performs more repairs than the drivers/service technicians. However, by the end of the day, on average, the amount of time spent by employees in each classification on the overlapping duties is similar. Thus, the service manager averages 4 hours per day on the road performing the duties of the driver/service technician and at least two of the driver/service technicians spend 2½ to 3 hours per day in the warehouse performing work similar to that of the service manager, including 1 to 1½ hours per day simply cleaning equipment, the same amount of time spent by the service manager. Moreover, the one driver/service technician spends every Thursday in the warehouse performing the same work as the service manager.<sup>6</sup>

#### **4. Contact and Interchange**

There is substantial contact between the driver/service technicians and the service manager. For instance, while it appears that some driver/service technicians

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<sup>6</sup> At the hearing, the Union introduced certain written job descriptions maintained by the Employer for the driver/service technicians and the service manager classifications. The Union contended these demonstrated that the job functions performed by the driver/service technicians and the service manager differed significantly. However, the uncontroverted testimony demonstrated that these job descriptions had not been drafted by the Employer and that they did not accurately reflect the duties actually performed by the driver/service technicians and the service manager.

may have more daily contact with the service manager than others, in all cases the contact between the driver/service technicians and the service manager is regular and frequent. The driver/service technicians spend the first one-half hour of each day interacting extensively with the service manager, jointly discussing their duties for the day and dividing the service call orders among themselves. Similarly, about ½ to 1 hour before the end of each workday, all of the driver/service technicians report back to the Employer's warehouse facility to unload their vehicles, clean returned equipment, and undertake equipment repair duties. During this time, they also discuss their day's duties and repairs with the service manager. Additionally, throughout the workday, the service manager routinely provides any necessary assistance by phone to driver/service technicians who require technical repair information. Further still, there is regular contact throughout the workday between at least two of the three driver/service technicians and the service manager, as the two driver/service technicians return to the warehouse two to three times per day and spend anywhere between 1 to 1½ hours in the warehouse performing the same type of cleaning and repair duties, in the same general location, as the service manager. Moreover, the one driver/service technician spends every Thursday performing the same work as the service manager.

Interchange is also frequent. On a daily basis, the service manager makes service calls when a driver/service technician is unavailable and the driver/service technicians perform cleaning and repairs when they have no other service calls to make. The four employees have a total of 13 weeks of vacation per year as well as sick days. The service manager fills in for the vacationing or ill driver/service technician and the driver/service technician who works in the warehouse on Thursdays performs necessary repair work in the absence of the service manager. Moreover, prior to assuming his current position, the service manager was a driver/service technician.

### **C. ANALYSIS**

The service manager shares an overwhelming community of interest with the driver/service technicians. The employees share virtually identical terms and conditions of employment; common supervision; have similar skills, qualifications, and training and have daily contact and interchange. Moreover, the functions of both classifications so overlap as to almost blur the distinctions between them. Accordingly, I find that the Employer has met its burden of establishing a community of interest so substantial as to negate the appropriateness of the unit sought by the Petitioner, and I shall include the service manager in the unit found appropriate here. *The Salvation Army*, 228 NLRB 1134 (1977); *Donald Carroll Metals*, 185 NLRB 409 (1970); *Standard Oil Co.*, 147 NLRB 1226 (1964). I also note that, at the very least, the service manager spends approximately 40 to 50 percent of his time performing the same work as the drivers and could be included in the unit as a dual-function employee. *Wilson Engraving Company, Inc.*, 252 NLRB 333 (1980); *The Salvation Army*, 228 NLRB 1134, 1136, fn. 9 (1977). In its brief, the Petitioner notes that office employees and supervisors occasionally make deliveries on an emergency basis if no driver/service technician or service manager is available. Petitioner does not contend that any of these individuals should be included in the unit, but does contend that this somehow diminishes the community of interest shared by the service manager and the driver/service technicians. This sporadic performance of unit work has no impact on the community of interest analysis; Petitioner's argument is simply without merit. *Wilson Engraving Company, Inc.*, supra.

### **III. FINDINGS AND CONCLUSIONS**

Based on 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 Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>7</sup>

3. The Petitioner 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 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 driver/service technicians, driver/route supervisor, and service manager employed by the Employer at its 677 West Imboden Drive, Decatur, Illinois facility, EXCLUDING retail store employees, customer service representatives, warehouse employees, bottle-filler, office clerical and professional employees, guards and supervisors as defined in the Act.

#### **IV. 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 Teamsters, Chauffeurs, Warehousemen & Helpers Local 279 affiliated with International Brotherhood of Teamsters, AFL-CIO. 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.

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<sup>7</sup> The parties stipulated that the Employer, an Illinois corporation, is engaged in the retail and non-retail sale and servicing of home health care equipment. During the past calendar year, a representative period of time, the Employer purchased and received goods valued in excess of \$50,000 directly from vendors located outside the State of Illinois and received gross revenue in excess of \$1,000,000.

## **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. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. 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 date and who have been permanently replaced.

## **B. EMPLOYER TO SUBMIT LIST OF EIGIBLE 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 Subregional Office, 300 Hamilton Boulevard, Suite 200, Peoria, IL 61602, on or before **March 18, 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 (309) 671-7095. 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 Subregional Office.

### **C. NOTICE OF POSTING OBLIGATIONS**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of 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 stops employers from filing objections based on nonposting of the election notice.

### **V. 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 p.m., EST on **March 25, 2004**. The request may **not** be filed by facsimile.

Dated March 11, 2004  
at Saint Louis, Missouri

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Ralph R. Tremain, Regional Director,  
National Labor Relations Board, Region 14  
and Subregion 33

400-7500  
440-1760-6280