

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

HOLMAN CONTRACT WAREHOUSING, INC.

Employer

and

Case 5-RC-15702

UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC¹

Petitioner

DECISION AND DIRECTION OF ELECTION

At the hearing, the parties stipulated that the appropriate unit for an election in the case consists of all full-time and regular part-time warehouse employees, including all space planners, rail crew, recoup employees, trainers, dispatchers, inventory control clerks, and maintenance employees, but excluding all employees of temporary employment agencies, office clerical employees, professional employees, guards, and supervisors as defined in the Act. The agreed-upon unit is, except for the janitor discussed below, a wall-to-wall unit of all non-supervisory, non-office clerical employees at the Employer's Perryville, Maryland, warehouse.²

There are two issues presented in this proceeding: (1) whether the janitor should be included in the appropriate unit; and (2) whether the receptionist/clerk should be included in the appropriate unit. The Employer contends that the janitor should be excluded from any unit found appropriate by the Regional Director as not sharing a community of interest, and that the receptionist/clerk should be included in any unit found appropriate. The Petitioner contends that the janitor should be included in any unit found appropriate, and the receptionist/clerk should be excluded as an office clerical.

The stipulated appropriate unit consists of approximately 130 warehouse employees who work three shifts: day; swing; and graveyard. There is no relevant history of collective bargaining for any of the Employer's employees at the location involved herein.

I have carefully considered the evidence and arguments presented by the parties regarding the issues. As discussed below, I conclude that the janitor should be included in the appropriate unit and that the receptionist/clerk should be excluded from the appropriate unit.

¹ The name of the Petitioner appears as amended at the hearing.

² The parties stipulated that employees of temporary help agencies properly are excluded from the unit. The record does not reveal how many "temporary" employees may be working at this facility.

The Employer presented one witness at the hearing, general manager Rod Brown. The Petitioner presented as its witness lift operator Clarence Norton.

The Employer, an Oregon corporation, is engaged in the business of contract warehousing at its Perryville, Maryland facility. During the preceding 12 months, a representative period, the Employer derived gross revenue in excess of \$50,000 from the performance of services directly to customers located outside the State of Maryland. The Employer at its warehouse facility receives, stores, and distributes appliances for General Electric.

Job Duties

The 130 warehouse employees perform three functions: unloading and receiving; pre-loading; and loading. Warehouse employees who function as receivers unload trucks and rail cars, verify merchandise counts, and place the merchandise in the storage locations. They obtain their work orders from the dispatch area.

The main task of pre-load employees in the warehouse is to select orders. They select the merchandise from the storage areas and move it to pre-load spots on the truck dock. They obtain their work orders from the dispatch area and return them to dispatch when finished. Pre-loaders operate the same type of equipment, including the clamp truck and lift truck with basaloid attachment (herein called the basaloid), as the receivers and the loaders. If a pre-loader is not at work, he is replaced by another warehouse employee.

Warehousemen who function as loaders are responsible for taking the merchandise from the pre-load spot and moving it into the truck. They obtain work orders from dispatch and when finished return the paperwork to dispatch. They use the same type of equipment as other warehouse employees and are trained by the Employer's trainers (who both parties agree are unit employees).

The rail crew is responsible for picking up the rail cars from the site adjacent to the CSX mainline, bringing the cars into the Employer's yard, and putting the appropriate number of cars into groupings which are then put next to the facility for unloading. Sixty percent of the merchandise arrives by rail. When the rail crew does not have work available they do general unloading work or pre-load. Contact between rail crews and warehouse employees is business related interaction regarding the movement of the rail cars. They also interact with employees in the office area, telling them what rail cars are against the side and what is going to be pulled for the day.

The six recoup employees spend 80% of their time reboxing and/or identifying damaged merchandise. The rest of the time they perform load, unload, or receiving duties. Two inventory control employees perform, among other tasks, receiving audits, outbound audits, and dealing with customer returns. They generally do not operate any equipment. The four space planners are responsible for locating the product within the storage areas. Space planners interact with warehousemen, shift managers, and office personnel. Space planners spend the majority of their time on the warehouse floor. On occasion they enter the office area to input information into the

computer. The eight or nine dispatchers, who work in the office area, put together the paperwork for the unloaders, pre-loaders, and loaders. They give the warehousemen their work assignments and when the work assignment is completed check to make sure the paperwork is filled out correctly. The dispatchers do not have any supervisory authority. The dispatchers have continual interaction with the warehousemen, office staff, shift managers, and space planners. The three maintenance employees are responsible for maintaining the equipment and the physical structure.

The janitor is responsible for cleaning up in the office area as well as the warehouse. In the office area he picks up the trash, vacuums, and mops. He cleans the lunchroom and helps with problems in the bathrooms. In the warehouse he picks up trash and cardboard, and runs the sweeper machine. One warehousemen has on occasion operated the sweeper. The janitor puts trash in the compactor, a machine he was trained to use by the former contracted maintenance service. The janitor spends 85% of his day cleaning in the warehouse, and the remaining 15% of his day cleaning in the office. He works from 4:30 a.m. to 1:00 p.m. If the janitor is absent no one fills in for him. The only interaction between the janitor and other employees in the warehouse is casual conversation. On rare occasions he has used equipment (clamp truck) used by the warehousemen to move cardboard out of his way. He was trained to operate the clamp truck and the basaloid by one of the trainers. He does not move freight on a regular basis as part of his duties. Generally he does not replace a warehouse employee, but he might be able to help out in recoup.

The receptionist/clerk, whose workstation is in the main entrance to the office, was converted from a temporary employee position to a regular full-time employee the day before the hearing. She does not perform any work outside the office area. The receptionist/clerk has not been trained to operate the basaloid or the clamp truck, and would never fill in for warehouse employees. She works from 7:30 a.m. to 4:00 p.m. and she is paid \$11.00 per hour. Duties of the receptionist/clerk include scheduling export containers and inputting inventory control data and productivity measurement cards, from which reports are run automatically tracking productivity of the warehousemen. She helps dispatch employees sort and file their paperwork. She also works with the export manuals (product manuals in foreign languages), making sure that there is stock on hand in advance of export shipments. Other duties include answering the telephone, taking calls that are customer service related as well as calls trying to find an individual at the facility. She performs no functions relating to payroll. In terms of equipment used, she uses a computer, copier, fax machine, printers, and telephone. She spends approximately 70 percent of her time using the computer, 10 percent serving as a receptionist, and approximately 20 percent on other chores such as sorting and filing the dispatchers' paperwork, which is a duty that has a lower priority than her other functions. If the receptionist/clerk is absent from work, another employee does not replace her. Her primary interactions are with the dispatchers, the shift manager, the assistant manager, and the operations manager. She also interacts with the inventory control manager regarding information to input into the database. Other employees who work in the office area are the general manager, administrative manager, human resources manager, inventory control manager, operations manager, dispatchers, payroll clerk, and all of the supervisors.

Wages and Benefits

No uniforms are worn by any of the employees, with the exception of the rail crew who wear safety vests while working outside. All non-salaried employees have the same benefits, employee handbook, and work rules. They all use the same time clock, and take breaks and lunch in the same areas. The warehouse employees' starting rate of pay is approximately \$11.00 to \$12.00 per hour, while their top rate is \$14.40 per hour. The receptionist/clerk is paid \$11.00 per hour. The janitor is also paid \$11.00 per hour.

Supervision

Each of the three shifts of warehouse employees, including space planners and recoup, has a shift manager, who in turn reports to the operations manager. The maintenance employees report to the facilities manager. Inventory control clerks report to the inventory control manager, and dispatchers report to the administrative manager. The payroll clerk, receptionist/clerk, and janitor report to the human resources manager.

Training

All warehouse employees are trained on equipment, including the clamp truck and basaloid, as well as on warehouse procedures, through a combination of classroom activity and actual use of the equipment by non-supervisory trainers. The trainers, one primary and one backup, are warehouse employees who have been selected for the trainer position. When the trainers are not conducting training sessions they work as warehouse employees. The janitor has been trained to operate the same equipment as the warehouse employees. The human resources manager, the inventory control manager, and the administrative manager train the receptionist/clerk. She has not been trained to operate any warehouse equipment.

Conclusions

A. The Janitor

Section 9(b) of the Act states the Board "shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof..." The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192 fn. 1 (1965); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf'd. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v.*

NLRB, 319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

In *Airco, Inc.*, 273 NLRB 348, 349 (1984), citing *Kalamazoo Paper Box Corp.*, 136 NLRB at 136, the Board found that a petitioned-for “plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees.” When a plant-wide unit is sought by the petitioner, as here, the burden of proving that the interests of a particular classification are so disparate from those of other employees that they cannot be represented in the same unit rests with the party challenging the unit’s appropriateness. *Livingstone College*, 290 NLRB 304, 305 (1988); *Airco, Inc.*, 273 NLRB at 349.

Community of duties and interests of the employees involved is the major determinant. *Swift Co.*, 129 NLRB 1391 (1960). If there is a sufficient community of interest among employees, the fact that groups of employees have different duties and responsibilities does not make a combination of those employees inappropriate. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963). Relevant considerations include: (a) similarity in the scale and manner of determining earnings; (b) common supervision (c) similarity of employee functions/type of work performed; (d) qualifications, skills and training of employees; (e) interchange and contact among employees; (f) integration of production processes; and (g) employment benefits, hours of work, and other terms and conditions of employment. *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962).

Applying the factors above to the facts developed on the record in this case, I find that the janitor clearly shares a sufficient community of interest to be included in the appropriate bargaining unit. The janitor is the only non-supervisory, non-office clerical employee who is not included in the unit. Even though his duties and supervision are different from those of the warehouse employees, he has been trained to use the same equipment as the warehouse employees and could bid on a warehouse job if he desired. The janitor has used warehouse equipment to move cardboard so that he could clean. One warehouse employee has, in the past, operated the sweeper used by the janitor. If not otherwise busy, the janitor could help out recoup employees. The janitor’s hourly wage is approximately the same as an entry-level warehouse employee, and he shares all the same benefits and work rules. Most importantly, if the janitor is not included in the agreed-upon unit, he would be the only unrepresented employee of the Employer at this facility, except for office clericals. Based on the above, I find that the janitor shares a sufficient community of interest with the warehouse employees, and therefore should be **included** in the appropriate unit.

B. The Receptionist/Clerk

Plant clerical employees are customarily included in a production and maintenance unit because they generally share a community of interest with the employees in the plantwide unit. *Raytec Co.*, 228 NLRB 646 (1977); *Armour & Co.*, 119 NLRB 623 (1957). Office clericals, on the other hand, are excluded from a production and maintenance unit. *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127, 1129 (1971); *Westinghouse Electric Corp.*, 118 NLRB 1043 (1957). Although office clericals may be under the same supervision as plant clericals and

share the same mode of compensation, they are typically excluded from a production and maintenance unit, while plant clericals are included. *Lilliston Implement Co.*, 121 NLRB 868, 870 (1958).

The receptionist/clerk and the unit employees are generally subject to the same personnel rules, are paid an hourly wage, have a common employee handbook, and receive the same benefits. That the unit employees and the receptionist/clerk share these terms of employment does not alone establish that the receptionist/clerk is a plant clerk sharing a significant community-of-interest with unit employees. *Avecor, Inc.*, 309 NLRB 73, 75 (1992). Far more consequential factors in deciding if the receptionist/clerk has a community-of-interest are the extent of interchange among the receptionist/clerk and unit employees, the nature and degree of their work-related contacts with one another, and their skills, duties, and working conditions. *Wickes Furniture*, 255 NLRB 545, 548 (1981). Moreover, the test for determining whether an employee is a plant clerical or an office clerical is whether the employee's duties are related to the production process (plant clerical) or are related to general office operations performed in the general office. *Cook Composites & Polymers Co.*, 313 NLRB 1105, 1108 (1994)

Significantly, the receptionist/clerk at issue does not have a direct and immediate role in the process of receiving customer orders, preparing picking tickets and invoices, or compiling shipping and receiving records.³ She does not perform the physical tasks involved in compiling merchandise or loading vehicles, and she does not perform clerical functions on or in proximity to the shop floor in association with the unit employees. *Fisher Controls Co.*, 192 NLRB 514 (1971). Rather, the receptionist/clerk spends most of her time answering the telephone, inputting data into the computer, and performing other office tasks. While she does not process payroll, the receptionist/clerk does input data from productivity measurement cards. This data enables management to measure and evaluate individual employees' productivity. In addition, the receptionist/clerk has markedly different working conditions, job skills and requirements from those of unit employees, separate immediate supervision, and works in the physically separate, general office. Her contacts and interchange with unit personnel, except for the dispatchers, are limited and sporadic, unlike the clerical personnel in *Roskin Brothers, Inc.*, 274 NLRB 413 (1985), or *Ives Business Forms*, 263 NLRB 286, 289 (1982), who regularly interacted with warehouse personnel in processing customer orders. Moreover, the record amply shows that there are other categories of employees, dispatchers and inventory control clerks, who perform the functions the Board traditionally associates with plant clericals in a warehouse distribution operation. *Jacob Ash Co., Inc.*, 224 NLRB 74, 75 (1976). The record clearly shows that the receptionist/clerk is far more removed, functionally as well as physically, from the warehouse process than the clericals in *Columbia Textile Services*, 293 NLRB 1034 (1989), and *Hamilton Halter Co.*, 270 NLRB 331 (1984).

Accordingly, the receptionist/clerk is **excluded** from the appropriate bargaining unit and is **not** eligible to vote in the election.

³ These facts distinguish the receptionist/clerk at issue here from the order clerk at issue in *All-American Distributing Co.*, 221 NLRB 980 (1975), cited in the Employer's post-hearing brief. There, the order clerk's duties included receiving and processing customers' orders, and the order clerk spent 20 to 25% of her work time in the warehouse and had regular work-related contact with warehouse employees.

CONCLUSIONS AND FINDINGS

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. Petitioner, United Steelworkers of America, AFL-CIO, CLC, a labor organization as defined in Section 2(5) of the Act, 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 parties stipulated that Holman Contract Warehousing, Inc., is a corporation of the State of Oregon, with an office and place of business in Perryville, Maryland where it is engaged in the business of contract warehousing. During the preceding 12 months, a representative period, the Employer derived gross revenue in excess of \$50,000 from the performance of services directly to customers located outside the State of Maryland.
6. I find, 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 warehouse employees, including all space planners, rail crew, recoup employees, trainers, dispatchers, inventory control clerks, maintenance employees, and janitor(s) employed by the Employer at its Perryville, Maryland facility, but excluding all employees of temporary employment agencies, office clerical employees including receptionist/clerk(s), professional employees, guards, and supervisors as defined in the Act.

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 **United Steelworkers of America, AFL-CIO, CLC**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. 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 Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

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

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **April 22, 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 (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a

minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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., EDT on **April 29, 2004**. The request may not be filed by facsimile.

(SEAL)

/s/ WAYNE R. GOLD

Dated: April 15, 2004
At Baltimore, Maryland

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5