UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

THE HOUSE OF LAROSE **Employer** **and**	**Case No. 8-UC-388**
TEAMSTERS LOCAL UNION NO. 293, **a/w INTERNATIONAL BROTHERHOOD** **OF TEAMSTERS** **Petitioner**	

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, careful investigation and consideration took place.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board, hereinafter referred to as the Board, has delegated its authority in this proceeding to the undersigned Regional Director.

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

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Union is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

3. The Employer is engaged in the distribution of Anheuser-Busch products throughout Northern Ohio.

The investigation revealed that Anheuser-Busch imposed a new requirement on the Employer in 1999, mandating that the Employer split sales from delivery, eliminating the positions of “driver-salesman” (also referred to as “route sales representatives” or “RSR”) and “Area Managers”, and creating two positions, “driver-deliverymen” and “impact sales representatives”. At that time, the Employer operated two facilities. In Akron, Ohio, the employees were represented by International Brotherhood of Teamsters, Local 348. In Cuyahoga Heights, Ohio, the employees were represented by International Brotherhood of Teamsters, Local 293. As a result of these mandated changes, Local 293 agreed to eliminate the RSR and Area Manager classifications from the recognition clause of the contract, while Local 348 insisted on keeping the classification “driver-salesman” in the unit description in case the

Employer exercised its reserved right to use that classification in the future. Thus, the Local 348 bargaining unit does not include the classification "impact sales representatives", whereas the Local 293 bargaining unit includes it.

The Collective Bargaining Agreement between the Employer and Local 293 is effective from June 1, 2002 through May 31, 2006. Prior to those negotiations, the Employer informed the Unions of the possibility that it might consolidate both operations at one facility. As a result of that announcement, the parties negotiated a "Relocation Addendum", to be effective only if the Employer consolidated its operations. In 2002, the Employer decided to close the Akron facility and relocate those operations to Cuyahoga County[1]. On May 5, 2003, the Employer and the principal officer of Local 293 (Charles Smith) reached agreement to modify the "Recognition" clause of their contract, excluding from the recognized unit all Sales Representatives who did not work in Cuyahoga, Lake, or Geauga counties. The impact of this agreement, (referred to as the "New Recognition Agreement") was that the sales department employees who were formerly domiciled in Akron and who were not part of the Akron bargaining unit were specifically excluded from the Local 293 bargaining unit.

On May 31, 2004, the Employer partially closed the Akron facility, relocating the bargaining unit work to the Cleveland facility. The Sales Department, including the impact sales representatives, remained in Akron. On December 6, 2004, the Employer closed the Cleveland facility and moved all of its functions to a newly built facility in Brecksville, Ohio. On January 24, 2005, the Employer moved the Akron sales function and the remainder of the administrative functions to the new facility. After the sales department employees were moved from Akron to Brecksville, new Local 293 representative Michael Zemla demanded that the Employer recognize the Union as the collective bargaining representative of the sales department employees from Akron, now domiciled at the Brecksville facility. Pursuant to the provisions of the New Recognition Agreement executed May 5, 2003, the Employer refused to recognize the Union as the representative of those employees.

After an exchange of letters, the Union grieved the enforceability of the New Recognition Agreement, demanding that the Employer agree to arbitrate the matter. On July 18, 2005, Local 293 filed the instant Petition.

ANALYSIS

In **Union Electric Co., 217 NLRB 666, 667 (1975)**, the Board described the purpose of the unit clarification petition:

> Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification

[1] Cuyahoga county is within the geographical jurisdiction of Local 293.

> continue to fall within the category--excluded or included--that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent. (emphasis supplied).

Thus, the Board will not clarify a unit by including a group of employees which were previously excluded by an agreement of the parties. The instant Petition presents just such an issue.

As noted above, the collective bargaining agreement between the parties is effective from June 1, 2002 through May 31, 2006. Normally, the Board refuses to clarify a unit midterm in the contract when the objective is to change the composition of a contractually agreed-upon unit by the exclusion or inclusion of employees. In refusing to clarify a unit in these circumstances, the Board has held that to grant a Petition at such a time would be disruptive of a bargaining relationship voluntarily entered into by the parties when they executed the existing contract. **Edison Sault Electric Co., 313 NLRB 753 (1994)** and **Arthur C. Logan Memorial Hospital, 231 NLRB 778 (1977)**. See also **San Jose Mercury & San Jose News, 200 NLRB 105 (1973); Credit Union National Assn., 199 NLRB 778 (1972); Wallace-Murray Corp., 192 NLRB 1090 (1971).**

Therefore, because the Petition in this matter seeks to include during the midterm of the contract a group of employees previously excluded by an agreement of the parties during the midterm of the contract, I shall dismiss it.

ORDER

IT IS HEREBY ORDERED that the petition be dismissed.

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 September 15th, 2005.

Dated at Cleveland, Ohio, this 1st day of September, 2005.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8