

held that a unit of all unlicensed seagoing employees is appropriate,⁵ and as the conveyormen appear to be the only remaining unrepresented group of unlicensed employees aboard the Employer's ships, having been excluded from the existing unit by agreement of the parties, we find that the conveyormen may constitute an appropriate residual unit, or may be appropriately added to the existing unit. Accordingly, we will make no final unit determination at this time but will direct a self-determination election in the following voting group:

All conveyormen employed on all self-unloaded vessels of the Bradley Transportation Line, Rogers City, Michigan, excluding all other employees, guards, and supervisors as defined in the Act.

If a majority of the employees in the voting group vote for MEBA, they will be taken to have indicated their desire to constitute a separate appropriate unit, and the Regional Director is instructed to issue a certification of representatives for MEBA for such unit, which the Board under the circumstances finds appropriate for the purposes of collective bargaining. If a majority of the employees in the voting group vote for District 50, UMW, they will be taken to have expressed their desire to become part of District 50's present unit of unlicensed seamen, and District 50 may bargain for them as part of such unit. If a majority of the employees in the group vote for neither, they will be deemed to have expressed their desire to remain unrepresented.

[Text of Direction of Election omitted from publication.]

⁵ *Pacific Maritime Association and Its Member Companies*, 110 NLRB 1647.

Ideal Laundry and Dry Cleaning Co. and Dry Cleaning and Laundry Workers Local Union Number 304, Dry Cleaning and Dye House Workers International Union, Petitioner.
Case No. 27-RC-2082. July 17, 1962

RULING ON REQUEST FOR REVIEW

On June 21, 1961, the Regional Director issued a Decision and Direction of Election in the above-entitled proceeding [not published in NLRB volumes] in which he found appropriate a unit of production and maintenance employees, excluding, *inter alia*, salaried and commission drivers. In accordance with the Board's Rules and Regulations, Series 8, the Employer filed a timely request for review, contending that the unit should also embrace office clerical employees and truckdrivers. The Board, by telegraphic order dated July 17, 1961, denied the request for review and directed that the unit description

be amended to provide that the unit placement of the salaried drivers¹ be deferred and their ballots be challenged at the election, which was held on July 19, 1961. Of approximately 126 eligible voters, 123 cast valid ballots, of which 59 were for, and 58 were against, the Petitioner; 6 ballots (those of the salaried drivers) were challenged; and 2 were void. The challenged ballots were sufficient in number to affect the results of the election. Thereafter the Employer filed timely objections to the conduct of the election, and the Petitioner filed timely objections to the election.²

After an investigation, the Regional Director issued his supplemental decision and certification of representatives on September 8, 1961, in which he sustained the challenges to the ballots of the six salaried drivers and overruled the Employer's objections in their entirety and the Petitioner's objection No. 1. As the Regional Director's ruling sustaining the challenges resulted in a conclusive election which was won by the Petitioner, he found it unnecessary to rule on Petitioner's objection No. 2 which he found was rendered moot. The Employer filed a timely request for review of the Regional Director's supplemental decision in which it, *inter alia*, relied upon the *Valley of Virginia* case³ and asserted that the six drivers should be included in the production and maintenance unit as the parties had not agreed upon their exclusion and no labor organization had sought their separate representation.

With respect to the six salaried drivers whose unit placement is in issue, the Regional Director in his supplemental decision made the following factual findings, which are not materially disputed by the Employer.

The six salaried drivers have working conditions that differ in many respects from those of the production and maintenance employees in the plant. Apart from the normal duties incidental to truckdriving, such as loading and unloading trucks, the four full-time drivers do no work inside the plant except on occasions when they assist, on a voluntary basis, in sorting, folding, and wrapping laundered articles for the purpose of expediting their own deliveries. The 2 relief drivers, during the 12 weeks' vacation period each year, regularly assume the driving duties of the 17 commission drivers (whose exclusion from the unit was sustained by the Board on review) and the other salaried drivers. They also drive during the absences of other drivers because of illness or other reasons. They likewise assist in the instruction of new drivers and do special driving around the city for the purpose of picking up parts for trucks and laundry supplies, and

¹ The Board unequivocally denied review of the Regional Director's exclusion of the commission drivers.

² Later, the Employer by letter filed an additional objection which we find, in agreement with the Regional Director, was untimely. See *Kermac Nuclear Fuels Corp*, 124 NLRB 429; *Flight Enterprises, Inc*, 119 NLRB 1442.

³ *The Valley of Virginia Cooperative Milk Producers Association*, 127 NLRB 785.

make special pickups and deliveries of laundry and dry cleaning items. When delivery trucks break down, the relief drivers also go out and do whatever is necessary to assist the driver. In addition, they help drivers find bundles or look for lost articles in order to expedite their deliveries. They also perform some routine laundry work. All of the drivers are salaried, whereas most of the plant employees are hourly paid. The salaries of the relief drivers are substantially in excess of those of the production workers. All drivers, unlike the plant employees, punch a time clock when reporting for work, but do not "punch out"; their total working hours vary considerably; they are not paid compensation when they work overtime. The relief drivers, as well as the full-time drivers, work under the direct supervision of the driver supervisor, although they may also take orders from the plant manager.

In the recent *Koester* case,⁴ the Board stated with respect to the unit placement of truckdrivers:

In our evaluation we shall consider, among others, the following factors: (1) whether they have related or diverse duties, mode of compensation, hours, supervision, and other conditions of employment; and (2) whether they are engaged in the same or related production process or operation or spend a substantial portion of their time in such production or adjunct activities. If the interests shared with other employees is sufficient to warrant their inclusion, we shall include the truckdrivers in the more comprehensive unit. If, on the other hand, truckdrivers are shown to have such a diversity of interest from those of other employees as to negate any mutuality of interest between the two groups, we shall exclude them.

In view of the foregoing, and as it is clear from the Regional Director's supplemental decision that the interests of the six drivers involved differ sufficiently from those of the plant employees to negate a mutuality of interest between the two groups, we find that the Employer's request for review raises no substantial or material issues with respect to the Regional Director's determination sustaining the challenges to the ballots of the six salaried drivers. We likewise find that the request for review does not raise any substantial or material issues with respect to the Regional Director's dismissal of the Employer's objections.⁵

[The Board denied the request for review.]

⁴ *E. H. Koester Bakery Co., Inc.*, 136 NLRB 1006. Although Members Rodgers and Leedom dissented from the majority holding in the *Koester* case, they feel they should now consider themselves bound by that opinion in order to facilitate the disposition of these cases in the Region and at the Board level.

⁵ See *George K. Garrett, Inc.*, 120 NLRB 484, 485; *Norris-Thermador Corporation*, 118 NLRB 1341, 1344-1345.