

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

WECARE TRANSPORTATION, LLC¹

Employer

and

Case 3-RC-11819

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 294²**

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 before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that WeCare Transportation, LLC, hereinafter referred to as the Employer, is engaged in the business of hauling solid waste. During the past 12 months, a representative period, the Employer, in conducting its business operations, derived gross revenues in excess of \$50,000, and purchased and received goods, supplies and materials valued in excess of \$50,000 directly from points outside the State of New York. Based on the parties' stipulation and

¹The Employer's name appears as amended at the hearing.

²The Petitioner's name appears as amended at the hearing.

the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the International Brotherhood of Teamsters, Local 294, hereinafter referred to as the Petitioner, is a labor organization within the meaning of Section 2(5) of the Act.

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.

The parties stipulated that the appropriate unit shall include all full-time and regular part-time long haul truck drivers, excluding residential area pickup employees (curbside drivers), dispatchers, mechanics, transfer station operators, clerical employees, professional employees, and supervisors as defined in the Act.

The Petitioner seeks a unit consisting of all long haul drivers employed by the Employer at its Canaan, New York terminal. The Employer contends that the appropriate unit consists of all long haul drivers employed by the Employer at its Canaan, New York and Weedsport, New York terminals, herein called the Canaan and Weedsport terminals respectively.³ Thus, the only issue before me is whether the petitioned-for unit is an appropriate unit, or whether the appropriate unit consists of long haul drivers at both the Employer's Canaan and Weedsport terminals.

Based on the evidence adduced during the hearing and the relevant case law, I conclude that the Employer has failed to rebut the presumption that the petitioned-for unit, consisting of all full-time and part-time long haul drivers employed by the Employer at its Canaan terminal, is an

³The Petitioner has stated that it is not willing to proceed to an election if the petitioned-for unit is not found to be an appropriate unit.

appropriate unit for purposes of collective bargaining, and I shall direct an election in the petitioned-for unit.

FACTS

The Employer is primarily engaged in the transportation of solid waste, construction and demolition waste, industrial ashes, contaminated soils, some liquid waste and other residual waste from transfer stations and customers to landfills throughout New York, Massachusetts, and Connecticut. The Employer serves both private and municipal transfer stations and its geographic area ranges from Waterloo, New York to the Hudson/Marlboro Massachusetts corridor, and south to New Haven and New Canaan, Connecticut.⁴ The Employer has a total of four terminals: its main office is located in Weedsport, New York and it maintains terminals in Canaan, New York, Spencer, Massachusetts and Mashpee, Massachusetts. The record contains no evidence regarding drivers employed by the Employer at its Massachusetts terminals, or regarding the specific operations of the Massachusetts terminals.⁵ There are 18 drivers at the Canaan terminal and 65 drivers at the Weedsport terminal.

The Canaan and Weedsport terminals are located approximately 194 miles apart, with Canaan being located in the eastern part of New York (southeast of Albany) and Weedsport located in central New York between Syracuse and Rochester. The Employer's headquarters are located at the Weedsport terminal. Thomas Jarrard, the Employer's president, and John Wallace, the director of operations, are located at the Weedsport terminal, along with controller Colleen Seeley and benefits coordinator Terry Potter. Personnel files for the drivers at both Weedsport and Canaan are maintained at the Weedsport terminal. The Employer tracks the Weedsport and Canaan drivers' medical cards and licenses in a computer system in Weedsport to ensure that they remain up to date.

⁴ A transfer station is a location where trucks deliver smaller loads of trash, which are then loaded into trailers and transported by the Employer to landfills.

⁵ The Employer does not seek to include drivers from its Massachusetts terminals in the proposed bargaining unit.

When the computer shows that a driver's license or medical card is expired, the dispatchers are instructed to obtain the required documents from the driver.

The Employer acquired the Canaan terminal on November 15, 2007, and the Canaan employees became employed by the Employer on November 16, 2007. The Employer accorded to the Canaan drivers the seniority dates they held while they were employed by Eaco Operations, one of the Employer's predecessors.⁶ When Eaco purchased the Canaan terminal in November 2005, it did not accord the drivers any seniority they had accrued prior to that purchase. Thus, the most senior drivers at Canaan have a seniority date of November 15, 2005, the date Eaco took over operation of the Canaan terminal. There is no evidence in the record establishing the manner in which driver seniority is computed at the Weedsport terminal.

Located at the Canaan terminal are dispatcher Shaun Santoro, terminal manager Bob McNamara, and Paul Tingler, who oversees the transfer station duties. There is no evidence in the record, nor has any party asserted, that either McNamara or Tingler exercise any of the supervisory duties delineated by Section 2(11) of the Act with respect to the drivers.

There is one dispatcher at the Canaan terminal and three dispatchers at the Weedsport terminal.⁷ The record demonstrates that the dispatchers at both terminals have essentially the same duties. All dispatchers at both Canaan and Weedsport take orders from customers, prepare dispatch sheets that govern the runs performed by drivers each day, and ensure that the drivers follow the dispatch schedule in servicing the Employer's customers. There are separate dispatch sheets for the Weedsport and Canaan terminals.

Dispatchers at both terminals report to director of operations John Wallace. Wallace reviews the dispatch sheets on a daily basis. Wallace testified that he "always" makes changes to

⁶ Covanta Energy, another predecessor employer, had purchased the Canaan terminal from Eaco and operated the terminal for approximately three months immediately preceding the Employer's acquisition of the Canaan terminal from Covanta Energy.

⁷ There is no evidence in the record regarding the dispatchers, if any, at the Employer's Massachusetts terminals.

the sheets. In Canaan, dispatcher Santoro prepares a draft dispatch sheet and faxes it to Wallace, who then advises Santoro by telephone as to what dispatch schedule changes need to be made. According to Wallace, the dispatchers are responsible for scheduling the runs.

The Employer provided the February 13, 2008 draft and final dispatch sheets, which show that all drivers ran the runs assigned to them in the draft dispatch sheet, and that some drivers picked up an additional load.⁸ Wallace testified that the handwriting on the far right-hand side of the draft dispatch sheet in evidence, consisting of what appears to be five or six stops added to the schedule, were his handwritten changes to the dispatch schedule. The final dispatch schedule shows approximately 13 additions to the dispatch schedule for that day. The record does not disclose who made the decision to schedule the additional loads not written in by Wallace. Likewise, there is no evidence that the February 13, 2008 Canaan dispatch schedule was representative of the Canaan dispatch schedule on other days. Other than Wallace's testimony that he always makes changes to the dispatch sheet, there is no other evidence in the record regarding Wallace's changes to the Canaan dispatch schedule.

Wallace testified that he and Santoro speak many times throughout the day regarding the dispatch schedule, and that Santoro is responsible for scheduling loads. Dispatchers report problems with drivers to Wallace. The Employer's president, Thomas Jarrard, testified that at Canaan, dispatcher Santoro is the "first level" and reports to Wallace regarding problems with drivers not doing their job or not showing up or taking too much time off. Wallace then follows up with discipline if necessary. There have been no instances of any disciplinary problems with Canaan drivers since the Employer acquired the terminal. Dispatchers may be disciplined for problems related to the dispatch function, but are not held accountable for driver errors.

⁸ It is unclear from the dispatch sheets exactly what the additional loads entailed, i.e., the customers serviced and whether the loads were delivered to the Weedsport or Canaan terminals, or to some other location. Wallace explained one entry for driver David Martin for whom he added a stop at Barbato Brick to pick up a load and bring it back to the Canaan terminal.

Dispatchers are responsible for assigning runs to drivers based on the drivers' qualifications and location.⁹ Some drivers only take local runs. Others are not certified for dump trailers or triples or other types of runs. Jarrard testified that there are "limiting factors on who can service the different accounts" and the dispatcher determines which driver to assign to the run. At the Canaan terminal, dispatcher Santoro assigns the drivers to the runs. If a Canaan driver calls off from work, he contacts Santoro. Santoro can grant time off requests on his own initiative. The dispatchers are responsible for scheduling vacations. The record is silent as to whether vacation requests are routinely granted, or whether these requests are reviewed by Wallace. The Employer's WeCare Companies Employee Manual directs all drivers to turn in their paperwork to their designated managers. At Canaan, drivers are required to give their paperwork to Santoro, who forwards it to Weedsport.

As noted above, Santoro prepares the dispatch sheet for the Canaan drivers. The drivers are listed by name on the Canaan dispatch sheet. Canaan drivers do not appear on the dispatch sheets for Weedsport, unless they are servicing the same customer as a Weedsport driver, or picking up a load of salt.¹⁰ When Canaan drivers service a Weedsport customer, the driver appears on the Weedsport dispatch list as "eco" and is not listed by name.¹¹ The Weedsport dispatch sheet also lists subcontractors who provide service to a Weedsport customer. For example, the Weedsport dispatch sheet for January 2, 2008 shows that, in addition to three named Weedsport drivers, two unnamed Canaan drivers, designated as "eco," and two named subcontractors serviced Weedsport's New Haven customer.¹² The Canaan drivers who appear as "eco" on the Weedsport dispatch are

⁹ It appears from the record that location is factored in because some drivers do not like to take long runs, and others do not like to take short runs. Thus, the dispatcher considers the location of the customer's terminal when assigning runs.

¹⁰ The Employer has a contract with the State of Massachusetts to provide salt, which is stockpiled at the Weedsport terminal.

¹¹ "Eco" is the designation for drivers from the Canaan terminal. It presumably is a remnant of the time when the terminal was owned by Eaco Operations.

¹² Although the subcontractors receive no special designation on the dispatch list, they are listed by name and Jarrard testified that he recognized the names as those of the subcontractors.

dispatched out of the Canaan terminal. Weedsport drivers do not appear on the Canaan dispatch sheet and are not dispatched from the Canaan facility.

Both Canaan and Weedsport drivers have the same job duties. Drivers at both locations perform a pre-trip inspection of their vehicles; both get paperwork for the runs they are dispatched on; both sets of drivers “live-load” (bring the trailer in and the customer loads it) and take the load to the landfill; both sets of drivers do post-trip vehicle inspections; both write up daily vehicle inspection reports; both fuel up and turn paperwork into the dispatcher. Drivers from both terminals perform “drop-and-hooks,” which means dropping an empty trailer at a customer’s terminal and exchanging it for a full trailer. Drivers from both terminals perform shuttle runs, which involve traveling from a terminal to the customer and then back to the terminal.

All drivers at both terminals are required to possess a CDL class A driver’s license. Some drivers at each terminal have additional certifications which allow them to pull double and/or triple trailers, to haul liquids, and hazardous waste. Drivers drive essentially the same kind of tractors. Some equipment from the Canaan terminal is not compatible with equipment from the Weedsport terminal.

Drivers from both terminals give their timesheets to the dispatchers, who forward them to controller Seeley. Santoro sends the timesheets to Weedsport either by overnight courier or via one of the drivers. Seeley compiles the payroll information and transmits it to ADP, an outside payroll firm. Drivers at both terminals are paid biweekly and on the same day. Paychecks at the Canaan terminal are placed on a desk and picked up by the individual drivers. All drivers at both terminals are compensated on a per drop basis and the rates are the same for drivers at both terminals. There is a sliding scale in place for both terminals, based on years of service, and a senior bonus program that applies to drivers employed for more than five years. There are no drivers at the Canaan terminal who qualify for the senior bonus program, because of the manner in which the Employer

calculated seniority for the Canaan drivers after it acquired the facility. The record does not disclose whether any drivers at the Weedsport terminal are eligible for the senior bonus program. Drivers at both terminals receive the same vacation benefits, health and dental insurance plans, and 401(k) plan.¹³

Drivers at both terminals undergo the same job orientation. The Employer conducted an orientation for the drivers at Canaan within 30 days of its acquisition of the terminal. Controller Seeley and benefits coordinator Terry Potter traveled from their offices in Weedsport to Canaan for the orientation. The WeCare Companies Employee Manual is provided to drivers at both terminals, and the Driver Procedures Handbook, which details items like tarping and certain disciplinary issues, is also provided to drivers at both terminals.¹⁴

Hiring decisions are made by a hiring committee located in Weedsport. In January 2008, the Employer developed a hiring committee comprised of the Employer's president, Jarrard, CEO Wes Gregory, and controller Seeley. Requests from departments for new hires go to the committee that, in turn, determines whether the position needs to be filled.¹⁵ Dispatchers may advise the committee that there is someone who is looking for a job or they may take an application and pass it along to director of operations Wallace. Dispatchers may advise Wallace or Jarrard that a former employee would like to be rehired. Dispatchers have no authority to hire, fire or discipline. The record does not disclose whether dispatchers effectively recommend individuals for hire or rehire, or whether they effectively recommend drivers for discipline or discharge.

Seventy to 75 percent of the Canaan drivers travel to Seneca Meadows, a large landfill located in Waterloo, New York daily, and 95 to 100 percent of the Weedsport drivers deliver to

¹³ It is unclear from the record whether drivers at the Employer's Massachusetts terminals are incorporated into the payroll records compiled at the Weedsport terminal, or whether those drivers receive the same pay and benefits as the drivers at the Weedsport and Canaan terminals.

¹⁴ There is no evidence in the record as to whether drivers at the Massachusetts terminals are provided the same employee manual and driver procedures handbook.

¹⁵ The record does not disclose whether the hiring committee is involved in the hiring of employees at the Employer's Massachusetts terminals.

Seneca Meadows each day. Seneca Meadows is located approximately 25 miles west of the Weedsport terminal. Canaan drivers pass the Weedsport terminal, located approximately two miles off the interstate, on their way to Seneca Meadows. Trucks from various companies throughout New York, Pennsylvania and Connecticut wait in line at Seneca Meadows for their turn to go across the scale and unload into the landfill. Canaan driver Michael LeVasseur testified that he drives to Seneca Meadows every day and has driven the same truck for a number of years. LeVasseur stated that he sees the Weedsport drivers at Seneca Meadows while he is waiting in the queue line and that, although he recognizes the drivers from the trucks that they drive, he does not speak to any Weedsport drivers while at the Seneca Meadows landfill. The remaining 25 to 30 percent of the Canaan drivers who do not drive to the Seneca Meadows landfill travel east to Massachusetts or Connecticut each day.¹⁶

Canaan drivers stop at the Weedsport terminal when they have been dispatched to backhaul a load of salt, or when they have an equipment problem, or need fuel. LaVasseur testified that since the Employer acquired the Canaan terminal in November 2007, he has stopped at the Weedsport terminal to backhaul salt approximately six times, and has stopped there on one other occasion due to an equipment problem on his truck.

Canaan drivers call dispatcher Santoro if they encounter a mechanical problem. Santoro tells the driver where to take the truck for repair. As noted above, LeVasseur testified that he experienced mechanical problems on one occasion since the Employer acquired the Canaan terminal. On that occasion, he called Santoro, who told him to take his tractor to the Weedsport terminal for repairs. According to LeVasseur, while there, he waited in his truck for the mechanic to fix the problem, and he did not interact with any Weedsport drivers. On most days, LeVasseur

¹⁶ The Canaan drivers traveling east transport waste and other materials, but the record contains no detailed evidence about the types of runs performed by these drivers, or the stops that they make. It is unclear from the record whether the Canaan drivers stop at the Employer's Massachusetts terminals when traveling to Massachusetts.

contacts Santoro after completing his drop at Seneca Meadows to find out whether he is being dispatched to Weedsport to backhaul salt. While LeVasseur has never contacted the dispatchers at Weedsport, they have given him the appropriate paperwork when he has hauled salt out of the Weedsport terminal.¹⁷

LeVasseur testified that he goes to Santoro if he has questions concerning his paycheck or any other work-related problems. For example, if there is a problem at a customer's terminal, LeVasseur calls Santoro, who tells him what to do. Santoro has never instructed LeVasseur to call Wallace, Jarrard or anyone from Weedsport regarding any problems, and LeVasseur has never, on his own initiative, contacted anyone in Weedsport regarding a work-related issue.

No Canaan drivers have transferred to Weedsport on either a temporary or permanent basis, and Weedsport drivers have not transferred to Canaan. The record contains no evidence that the Employer has held joint meetings with the Weedsport and Canaan drivers.¹⁸ The record demonstrates that the Employer's president Jarrard has visited the Canaan terminal on one occasion shortly after the Employer acquired the Canaan terminal in November 2007. The record contains no evidence that director of operations Wallace has ever been to the Canaan terminal.

There is no history of collective bargaining at either terminal.

ANALYSIS

Unit Scope

A bargaining unit need not be the most appropriate unit under all of the circumstances, it must be only an appropriate unit. Marine Spill Response Corporation, 348 NLRB No. 92 (December 18, 2006), slip op. at 7, citing American Hospital Ass'n v. NLRB, 499 U.S. 606, 610 (1991). The Board has consistently held that a single-facility unit is presumptively appropriate

¹⁷ The record does not disclose how often LeVasseur has received paperwork from the Weedsport dispatchers.

¹⁸ There is no evidence in the record regarding transfers between the Canaan and/or Weedsport terminals and the Employer's Massachusetts terminals, and no evidence as to whether there have been any meetings jointly attended by the Weedsport and/or Canaan drivers and the Massachusetts drivers.

unless it has been so effectively merged into a more comprehensive unit or is so functionally integrated that it has lost its separate identity. Trane, 339 NLRB 866 (2003); Cargill, Inc., 336 NLRB 1114 (2001); New Britain Transportation Co., 330 NLRB 397 (1999); Centurion Auto Transport, 329 NLRB 394 (1999). To determine whether the presumption has been rebutted, the Board examines such factors as the extent of centralized control over labor relations and daily operations, whether local management possesses substantial autonomy, the extent of employee interchange, the similarity of employee skills and functions, the geographic distance between the facilities and the presence or absence of a bargaining history. Trane, 339 NLRB at 867; New Britain Transportation Co., 330 NLRB at 397; Esco Corp., 298 NLRB 837 (1990). The party opposing the single-facility presumption has the burden of presenting sufficient evidence to rebut the presumption. J&L Plate, 310 NLRB 429 (1993). In the instant case, I conclude that the Employer has failed to meet its burden to rebut the presumption that the petitioned-for unit consisting of the long haul drivers at the Canaan terminal is an appropriate unit.

Centralized Control and Local Autonomy

The record demonstrates that there is some centralized control over labor relations. All requests for new hires are referred to the Employer's hiring committee. Employee timecards, personnel files, invoices and other administrative items are processed and housed at the Employer's Weedsport terminal. Employee time sheets are merged into one payroll record which is forwarded to the same payroll processing company for processing, and drivers at both terminals are paid on the same day. All drivers are paid on the same per drop, sliding scale basis, although I note that no drivers at the Canaan terminal are currently eligible for the senior bonus program as a result of the manner in which the seniority of these drivers was determined upon the Employer's acquisition of the Canaan terminal. There is one employee manual and one driver procedures handbook for both

terminals. All drivers at both terminals receive the same benefits, which are coordinated out of the Weedsport terminal.

The evidence of centralized labor relations, however, is greatly outweighed by the substantial local autonomy enjoyed by the Canaan terminal. In so finding, I note that dispatcher Santoro has significant control over the daily operations of the Canaan terminal. There is no employee interchange between terminals, no evidence of any interaction between the Canaan drivers and the Weedsport drivers, and there is significant geographical distance, 194 miles, between the two terminals.

Although no party raised the issue of dispatcher Santoro's Section 2(11) status in the underlying hearing, the Petitioner asserted for the first time in its post-hearing brief that Santoro is a statutory supervisor. Section 2(11) of the Act defines a statutory supervisor as any individual with the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Individuals are statutory supervisors if they hold the authority to engage in any one of the twelve supervisory functions (e.g. assign or responsibly direct); their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and their authority is in the interest of the employer. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 713 (2001). In Oakwood Healthcare, 348 NLRB No. 37 (September 29, 2006), the Board clarified the criteria for finding that a purported supervisor "assigns" and "responsibly directs" the work of others, and uses "independent judgment" in doing so. The Board held that the authority to assign refers to "the act of designating an employee to a place (such as a location, department, or

wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee. *Id.*, slip op. at 4.

The Board further noted that for direction to be responsible, the person performing the oversight must be held accountable for the actions of others. “Thus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. . . . and a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id.*, slip op. at 7.

Finally, the Board stated that in order to exercise independent judgment, the direction “must be independent [free of the control of others], it must involve a judgment [forming an opinion or evaluation by discerning and comparing data], and the judgment must involve a degree of discretion that rises above the ‘routine or clerical.’” *Id.*, slip op. at 8.

I find that the Petitioner has failed to meet its burden of showing that dispatcher Santoro is a supervisor within the definition of Section 2(11) as set forth in the Board’s decision in Oakwood. The Petitioner argues, and the record demonstrates, that the drivers at the Canaan terminal report to Santoro, who has the authority to grant time-off requests and is responsible for scheduling vacation requests. Drivers call Santoro when they are unable to report to work, and he assigns drivers work based on their qualifications and location. The record shows that Santoro is responsible for matching drivers with runs based on skill and the customer’s location, and that he makes the determination whether to grant time-off requests without consulting with director of operations Wallace before doing so. The record further demonstrates that Santoro is responsible for directing drivers as to how to proceed if there is a problem with a customer or with equipment.

However, the record contains no evidence that Santoro uses independent judgment in scheduling and directing the work of drivers at the Canaan terminal. There is no evidence that

Santoro is held accountable for the work performed by the Canaan drivers or that he has any authority to take corrective action with respect to the Canaan drivers, or that Santoro is subject to any adverse consequences based on inadequate driver performance. To the extent that Santoro grants time off and vacation requests, the record contains no evidence that Santoro exercises any independent judgment in doing so, or that these tasks require any discretion that exceeds the boundaries of the routine and/or the clerical. As the party seeking to establish Santoro's status as a Section 2(11) supervisor, the absence of such evidence weighs heavily against the Petitioner.

The party that asserts an individual has supervisory authority has the burden of proof. Dean & Deluca New York, Inc., 338 NLRB 1046 (2003); NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 713 (2001). Purely conclusory evidence is not sufficient to establish supervisory status; rather, the party must present evidence that the employee actually possesses the Section 2(11) authority at issue. Golden Crest Healthcare Center, 348 NLRB No. 39 (September 29, 2006). A "paper showing" or testimony merely asserting generally that individuals exercised certain supervisory duties is not sufficient to meet the burden of proof. Rather, the testimony must include specific details or circumstances demonstrating the existence of supervisory authority. Avante at Wilson, Inc., 348 NLRB No. 71 (October 31, 2006).

I find that the Petitioner has failed to introduce the sort of specific detailed evidence required by the Board to meet its burden in demonstrating that Santoro is a supervisor within the meaning of Section 2(11) of the Act. Specifically, the Petitioner has failed to introduce evidence that demonstrates that dispatcher Santoro exercises independent judgment in scheduling and directing the work of the drivers and in granting time-off and vacation requests. In the absence of such evidence, I am unable to conclude that Santoro is a statutory supervisor. See, e.g., Shaw, Inc., 350 NLRB No. 37 (July 30, 2007)(purported supervisor's authority to exercise some supervisory indicia, including authority to grant time-off requests, is insufficient to demonstrate Section 2(11)

status in the absence of evidence that the purported supervisor exercised independent judgment in the performance of his/her putative supervisory duties).

Notwithstanding the absence of a Section 2(11) supervisor at the Canaan terminal, I nonetheless note that the Canaan terminal maintains a separate and distinct identity from the Weedsport terminal. The Canaan terminal has its own dispatch sheet which is prepared by Santoro and which schedules only the drivers at that terminal. The 18 long haul drivers from Canaan do not contact the Weedsport dispatchers for direction, and the 65 Weedsport long haul drivers do not contact Santoro. Santoro is the only individual responsible for the Canaan terminal's operations and its drivers within an almost 200-mile radius, and the drivers have little to no contact with anyone from the Weedsport terminal.¹⁹ Where Canaan drivers incidentally appear on the Weedsport dispatch because they are servicing a Weedsport customer, they do not appear by name but rather are designated as "eco" and they are actually dispatched out of the Canaan office.

Although the Employer argues that director of operations Wallace has the final word on the Canaan dispatch sheet, I find that the record demonstrates that the schedule is prepared by dispatcher Santoro, and that the Canaan drivers carry out their day-to-day duties under his direction. The record contains no evidence that Wallace has ever been to the Canaan terminal. Further, it appears from the record that he has met only six of the eighteen Canaan drivers since the Employer acquired the Canaan terminal.

To the extent that the Employer maintains that Wallace makes changes to the Canaan dispatch schedule on a daily basis, I note that the evidence provided by the Employer consisted of changes to a single day's dispatch schedule. Further, the evidence fails to show that the majority of that day's changes were made by Wallace. Moreover, the record does not disclose whether that day

¹⁹ To the extent that the Employer claims that approximately six employees visited director of operations Wallace with questions or concerns, it appears that these contacts were voluntary on the part of employees and related to the Employer's recent acquisition of the Canaan terminal. There is no evidence that any Canaan driver contacted Wallace to get instruction or assignment in his regular duties.

is representative of the changes typically made by Wallace on any given day. Thus, I find that the record demonstrates that dispatcher Santoro is responsible for the day-to-day operations of the Canaan terminal.

While there is evidence that there is centralized control over labor relations in terms of payroll, record keeping and benefits, and that the Canaan schedule is reviewed and sometimes changed by Wallace at the Weedsport terminal, the record demonstrates that the Canaan terminal is substantially autonomous, with the Canaan drivers carrying out their duties independent of the drivers at the Weedsport terminal. See, e.g., Esco Corp., 298 NLRB 837 (1990)(the single-facility presumption stood intact notwithstanding the absence of a Section 2(11) supervisor where the record demonstrated the presence of an individual responsible for the day-to-day direction and assignment of employees).

As the Board noted in Rental Uniform Service, 330 NLRB 334, 335 (1999):

A unit consisting of employees at a single-plant or store location is presumptively an appropriate unit unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. D&L Transportation, Inc., 324 NLRB 160, 160 (1997); J&L Plate, Inc., 310 NLRB 429, 429 (1993); Bowie Hall Trucking, 290 NLRB 41, 42 (1988); Dixie Belle Mills, 139 NLRB 629, 631 (1962).

In light of the overwhelming evidence that the Canaan terminal has maintained its separate identity since the acquisition, I find that the Employer has not met its burden in demonstrating that the operations of the Canaan terminal are so intertwined with those of the Weedsport terminal as to render the petitioned-for unit inappropriate. See, e.g., Marine Spill Response Corporation, 348 NLRB No. 92 (December 18, 2006)(burden is on the employer to demonstrate that a single-facility unit is inappropriate).

Similarity of Skills, Functions and Working Conditions

The Canaan and Weedsport drivers' skills, job functions and working conditions are similar. All drivers are required to possess a CDL class A license to drive for the Employer. Although some drivers possess additional driving certifications, such as a doubles or triples certificate or tanker certification, the record demonstrates that the holding of additional certifications bears no relation to the terminal at which the driver is located. All of the drivers' required certifications and medical information is tracked out of the Weedsport terminal. Drivers at both terminals do live-loads, drop-and-runs, and shuttle runs, and drivers at both terminals are responsible for the same pre- and post-trip inspection and paperwork.

Degree of Employee Interaction and Interchange

The record demonstrates that there is little interaction and there is no interchange between the Canaan drivers and the Weedsport drivers. Regarding interaction, although the Employer's president Jarrard testified that the Canaan drivers are at the Weedsport terminal on a daily basis and that they *might* talk then, or at the landfill, or on the CB radio, the Employer provided no specific evidence of interaction. Rather, the record demonstrates that while the Canaan drivers see the Weedsport drivers when they are at the landfill, they know them only by the trucks that they drive and they have no more interaction with these drivers than with any of the drivers of the other companies waiting to dump their loads at the landfill. Although Canaan drivers are sometimes dispatched or directed to the Weedsport terminal to backhaul salt or for equipment repairs, there is no evidence that there is any interaction between the Canaan and Weedsport drivers during these times. Rather, Canaan driver LeVasseur testified that he remains in his truck at the Weedsport terminal when there to pick up salt or for repairs, and does not speak to anyone except for the mechanic, or a dispatcher who might hand him his paperwork if he is taking a backhaul of salt. Lack of interaction between employees is a significant factor examined by the Board in determining

whether the single-unit presumption has been rebutted. Hamburg Knitting Mills Company, 239 NLRB 1231 (1979).

The Employer argues in its post-hearing brief that there is significant interchange between the two sets of drivers, as evidenced by the fact that Canaan drivers routinely appear on the Weedsport dispatch list and service the same customers as the Weedsport drivers. In support of this argument, the Employer cites Dattco, Inc., 338 NLRB 49 (2002). I find Dattco distinguishable from the facts here. In Dattco, as in the instant case, bus drivers from the petitioned-for terminal served the same customers as other terminals operated by the employer. However, unlike the instant case, the Dattco drivers were shuttled on a daily basis to other terminals, were supervised by the managers of their receiving terminals on a daily basis and not by their home terminal, and serviced the routes as directed by the receiving terminal.

In the instant case, the Canaan drivers are dispatched by the Canaan terminal and report only to dispatcher Santoro, even when they appear on the Weedsport dispatch list. The Employer has provided no evidence that the Canaan drivers ever take direction from the Weedsport dispatchers when they service the Weedsport customers. In the absence of such evidence, I find the Employer's contention that the two terminals are functionally integrated to be without merit. See, e.g., Purolator Courier Corp., 265 NLRB 659, 661 (1982); Dayton Transport Corp., 270 NLRB 1114 (1984) (in determining whether there is functional integration, the Board looks at both the degree of employee integration *and* the extent to which the employees are supervised by supervisors from other terminals.)

Likewise, there is no evidence in the record that there is any more integration in operations between the two terminals, or between the drivers of the two terminals, when the Canaan drivers service Weedsport customers than when they service Canaan customers. The record contains no evidence that the Weedsport dispatchers are any more involved in the day-to-day work of the

Canaan drivers who service Weedsport customers than they are in the Canaan drivers who service Canaan customers. Likewise, there is no evidence of any interaction between the Weedsport drivers and the Canaan drivers when they are servicing the Weedsport customers, or that the duties of the Canaan drivers are functionally integrated with those of the Weedsport drivers during these runs. I thus find this evidence unpersuasive as to the issue of employee interchange.

In determining whether there is sufficient employee integration to rebut the single-facility presumption, the Board relies in large part on the degree to which employees transfer between facilities, and particularly on evidence of temporary transfers. Mercy Medical Center San Juan, 344 NLRB 790, 793 (2005). In the instant case, no drivers from Canaan have transferred on either a temporary or permanent basis to Weedsport, and no Weedsport drivers have transferred to Canaan. Further, there is no evidence of Employer meetings attended by the Weedsport and Canaan drivers together. To the extent that the Employer held an employee job orientation, the orientation was at the Canaan terminal and attended by only the Canaan drivers. This evidence is insufficient to support a contention that the drivers at Canaan interact with the drivers at Weedsport, or that there is any interchange between the two sets of drivers that would rebut the single-unit presumption. See, e.g., Hilander Foods, 348 NLRB No. 82 (November 30, 2006) (evidence that employees transferred from other stores on a sporadic basis to cover vacations and absences, as well as three additional temporary transfers and eight permanent transfers insufficient to rebut the single-unit presumption).

Thus, I find that the record fails to establish any interaction or interchange between the drivers of the two terminals that would support a finding that the two terminals are functionally integrated to the extent that the operation of one terminal is dependent on the continuing operation of the other terminal. See, e.g., Southern California Water Company, 228 NLRB 1296, 1297 (1977)

(“operations are not so functionally integrated that a cessation of work in one [location] would cause a systemwide shutdown of operations”).

Geographic Proximity

The record demonstrates that the distance between the terminals is approximately 194 miles. While geographical separation is not necessarily conclusive, it is a strong factor in determining that a single-terminal unit is appropriate. Van Lear Equipment, Inc., 336 NLRB 1059 (2001). See also Bowie Hall Trucking, 290 NLRB 41, 43 (1988) (geographic separation gains significance where there exist other persuasive factors supporting the single-unit presumption.) In light of the significant autonomy enjoyed by the Canaan terminal and the lack of employee interaction or interchange and lack of functional integration, I find that the distance between the terminals further supports my finding that the petitioned for single unit is appropriate herein.

The burden of overcoming the single-unit presumption is a heavy one. Trane, 339 NLRB 866 (2003). “In order to rebut the presumption, the Employer must demonstrate integration so substantial as to negate the separate identity of the single facility.” Mercy General Hospital, 344 NLRB 790, citing Heritage Park Health Care Center, 324 NLRB 447, 451 (1997). In the instant case, I find that the Employer has failed to meet its burden and the presumption that the petitioned-for unit consisting of drivers at the Canaan terminal has not been rebutted.

I find the Board’s decision in Esco Corp., 298 NLRB 837 (1990), to be instructive in the instant case. In Esco, the Board concluded that the single-facility unit presumption had not been rebutted. In weighing the relevant factors, the Board found that the lack of regular and substantial interchange or contact between the warehouse employees at one location and employees at other locations, together with the distances between locations (between 174 miles and 280 miles) outweighed the centralized operations and labor relations, limited local autonomy, and the common

skills and functions of the employees at all three locations, even where the record demonstrated that employees at all locations were supervised by a common manager.

The lack of regular and substantial interchange or contact between the Seattle warehouse employees and employees at other locations plus the great distances between locations outweigh the centralized operations and labor relations, limited local autonomy, and the common skills and functions of the employees at all three locations. Although Doran is not a statutory supervisor, the Employer does rely on him to oversee the warehouse operation. This is significant as here the locations are far apart, and the Employer's managers are not onsite and visit only infrequently.

Id. at 840.

Similarly, here, I find that the Employer relies on dispatcher Santoro to oversee its day-to-day operations at Canaan. This fact, coupled with the lack of evidence of any interchange or interaction between drivers of the two terminals, as well as the substantial distance between the terminals, outweighs the factors of centralization of the Employer's operations and labor relations, and the common skills and functions of the drivers at the two terminals.

Finally, the fact that there is no bargaining history and no other labor organization seeks to represent the employees in a broader unit are factors that also weigh in favor of the single-facility presumption. New Britain Transportation Co., 330 NLRB 397, 398 (1999).

Accordingly, upon review of the relevant factors, I conclude that the preponderance of record evidence fails to establish that the operations of the Canaan terminal are so intertwined with those of the Weedsport terminal as to negate its identity as a single facility. Rather, I find, based on the evidence of autonomy enjoyed by the Canaan terminal, as well as the lack of evidence of interaction between employees and interchange between the two terminals, lack of functional integration, as well as the significant distance between the terminals, that the Employer has failed to meet its heavy burden to rebut the presumption that the petitioned-for unit consisting of employees at the Canaan terminal is an appropriate unit for the purposes of collective-bargaining.

CONCLUSION

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time long haul truck drivers, excluding residential area pickup employees (curbside drivers), dispatchers, mechanics, transfer station operators, clerical employees, professional employees, and supervisors as defined in the Act.

There are approximately 18 employees in the bargaining unit found appropriate.

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 **International Brotherhood of Teamsters, Local 294**. 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. 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. 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). The 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.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **May 1, 2008**. 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 to the Regional Office by electronic filing through the Agency's

website www.nlr.gov,²⁰ by mail, by hand or courier delivery, or by facsimile transmission at (716) 551-4972. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, 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 at least 3 working days prior to 12:01 a.m. of the day 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 non-posting 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, DC 20570-0001. This request must be

²⁰ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

received by the Board in Washington, DC by **5 p.m. EDT, May 8, 2008**. The request may be filed electronically through the Agency's web site, www.nlr.gov,²¹ but may not be filed by facsimile.

DATED at Buffalo, New York this **24th day of April, 2008**.

HELEN E. MARSH Regional Director
National Labor Relations Board, Region 3
Niagara Center Building – Suite 630
130 S. Elmwood Avenue
Buffalo, New York 14202

²¹ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.