

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

H.D. SUPPLY CONSTRUCTION SUPPLY, LTD
d/b/a WHITE CAP CONSTRUCTION SUPPLY¹

Employer

and

Case No. 20-RC-18177

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 853,

Petitioner

DECISION AND DIRECTION OF ELECTION

H.D. Supply Construction Supply, Ltd d/b/a White Cap Construction Supply (the Employer), is engaged in the wholesale sale of equipment and other industrial supplies to professional construction contractors at its San Francisco, California facility. By its amended petition, International Brotherhood of Teamsters, Local 853 (the Petitioner) seeks to represent a unit of the Employer's drivers, warehouse employees (including regular warehouse employees, the lead warehouse employee, receiving employees and tool room employees), and counter sales employees (including the lead counter sales employee) employed at the facility. The petitioned-for unit is comprised of about 56 employees. The Petitioner takes an alternative position that, if the petitioned-for unit is not found to be an appropriate unit, a unit comprised of the warehouse employees and the drivers only should be found to be an appropriate unit. This alternative unit would be comprised of about 42 employees. The Employer takes the position that the only appropriate unit is one that includes all of the Employer's approximately 71 hourly employees, which includes, in addition to the employees in the petitioned-for unit, the dispatcher, inside sales employees, inventory control employees and cashier/receptionists. The parties stipulated, and I find, that

¹ The Employer's name has been amended in accord with the parties' stipulation.

the four managers at the facility, as set forth below, should be excluded as statutory supervisors, and that the account managers (also called outside sales employees) should also be excluded from the unit.²

After carefully reviewing the record, I find, for the reasons discussed below, that neither the petitioned-for unit nor the alternative unit urged by Petitioner is an appropriate unit, and that the only appropriate unit is the wall-to-wall unit argued by the Employer.

FACTS

Employer's Facility and Operation. The Employer operates a 32,000 square foot warehouse in San Francisco from which it sells supplies to professional construction contractors.³ The San Francisco facility is one of about 163 locations operated by the Employer in the United States. It is open Monday through Friday, from 6 a.m. to 5 p.m. Orders are placed by telephone, internet and walk-in customers, and deliveries are made by Employer drivers, freight shipments, and UPS. Customers also may pick up their orders. The Employer offers local, same-day delivery. Merchandise is stored in the warehouse on 16-foot racks. The warehouse has three loading docks, a separate storage building and a parking lot. Inside the customer entrance to the Employer's warehouse is a sales counter staffed by counter sales employees and an adjacent cashier's window staffed by cashier/receptionists. Customers are serviced at the sales counter or they may enter the warehouse storage area to find their own products. Behind the sales counter is an enclosed office area, comprised of: the offices of the manager and assistant manager; an area where invoices and receiving records are processed; an area where purchasing and inventory employees input computer entries; an area with cubicles and computers for inside sales employees and

² The parties' stipulation is fully supported by the record, which shows that the account managers lack a community of interest with other unit employees because they: are paid on commission basis; do not report to the managers at the San Francisco facility, but rather to higher-level division or district managers; and, solicit sales in areas not limited to the area serviced by the San Francisco facility.

³ The Employer's facility was previously owned by Home Depot and the description of its operation in the record appears similar to that of a typical retail Home Depot, except that the Employer sells only to licensed contractors and not to members of the general public.

account managers; and, a product reference library. On one side of the office area is a break room; on the other side is a fenced-in tool room for more valuable merchandise.

The Employer's Management and Supervision. Branch Manager David Borgognoni works at the facility from 7 a.m. to 5 p.m., and spends two-thirds of his time in the warehouse overseeing sales and logistics for the entire facility. Reporting to Borgognoni are Assistant Branch Manager John Zinc, Warehouse Manager Jacob Garcia and Purchasing /Inventory Control Manager Kevin Callahan. The parties stipulated that Borgognoni, Zinc, Garcia and Callahan are statutory supervisors. Zinc substitutes as Branch Manager when Borgognoni is absent and possesses full authority to hire, fire, discipline and allocate work to all employees. When Borgognoni is present at the facility, Zinc manages the sales operation—including the counter sales and inside sales employees, cashier/receptionists and one territory sales assistant. Garcia manages the warehouse operation, which includes the drivers, regular warehouse employees, one lead warehouse employee, receiving employees, tool room employees and dispatcher. Garcia possesses authority to effectively recommend the hiring, firing and disciplining of these employees and he assigns their work. He has no authority over other employees. Callahan manages the purchasing and inventory control functions and employees and his authority over those employees is similar to that of Garcia over warehouse employees. Borgognoni, Zinc, Garcia and Callahan are the only managers or supervisors at the facility and are the only salaried personnel.

The Employer's Hourly Workforce. The Employer has approximately 71 hourly employees-- including approximately 14 drivers, 20 regular warehouse employees, one lead warehouse employee, four receiving employees, three tool room employees, one dispatcher, 14 counter sales employees (including a lead counter sales employee), eight inside sales employees, two cashier/receptionists, one territory sales assistant,⁴ three inventory control employees and one purchasing assistant.⁵ As indicated above, there are

⁴ The territory sales assistant is an inside sales employee in training to become an account manager. Although no party took a position on the unit placement of the territory sales assistant, it appears from the record that neither party seeks the inclusion of this employee in the unit.

also account managers working at the Employer's facility who are excluded from the unit based on the parties' stipulation. Below is a brief description of each of these classifications:

Drivers. The parties stipulated, and I find, that the drivers should be included in any unit found appropriate. The Employer's 14 drivers make local deliveries in the San Francisco Bay Area primarily using small trucks. Only two of the drivers are licensed to drive vehicles weighing over 26,000 pounds; the others have regular commercial licenses.⁶ The job of a driver includes pulling merchandise from warehouse shelves in order to fill customer orders; loading the orders onto checking tables or pallets to be checked prior to loading for delivery;⁷ boxing or packaging orders; loading orders onto their trucks; performing safety inspections of their vehicles; making deliveries to customers on one or two daily routes; and, at the end of their routes, returning any rejected merchandise to the warehouse and submitting paperwork to the cashier/receptionists. On a daily basis, drivers spend about two to three hours in the warehouse and five to six hours on the road. If drivers return prior to the end of their shift, they sometimes pull orders for the following day's route. There are also occasions when drivers pull and stock orders in the warehouse all day. There is no evidence that drivers substitute for absent employees in other job classifications.

Drivers generally work the following shifts: 6 a.m. to 3 p.m.; 7 a.m. to 4 p.m.; 8 a.m. to 5 p.m. or 9 a.m. to 6 p.m. The two drivers with licenses to drive heavier trucks are paid between \$16.89 and \$25 per hour. The other 12 drivers are paid between \$10 and \$14.87 per hour. While the record shows that drivers work overtime hours, the frequency and amount of such overtime is not established in the record.

⁵ No party took a position on the unit placement of the purchasing assistant although from the record it appears that the Petitioner would seek the exclusion of this position and the Employer would seek its inclusion.

⁶ Drivers are certified by an outside contractor (Choice Point) with regard to medical and driving records and they are certified to transport hazardous materials.

⁷ Orders are checked by Borgognoni, Zinc, Garcia, by inventory control employees, and by other drivers or warehousemen who have sufficient knowledge of products to assure quality.

Dispatcher. The parties dispute the inclusion of the dispatcher in the unit. The Petitioner seeks to exclude the dispatcher, while the Employer argues for inclusion. Dispatcher Miguel Portico works throughout the warehouse, coordinating driver deliveries using a mobile telephone and also using a land-line telephone located at a shipping desk in the warehouse. Portico also is certified by Choice Point to drive the Employer's vehicles and makes deliveries on an as-needed basis. In addition, he pulls orders, assists drivers in loading their vehicles and checks orders pulled by drivers and warehousemen. There is no showing that Portico substitutes for any employees other than drivers. He is paid at the same wage rate as the highest-paid driver.

Warehouse Employees. The parties stipulated to the inclusion of the warehouse employees in any unit found appropriate. The approximately 20 warehouse employees pull products ordered by customers and stock warehouse shelves. They use computers in the warehouse and office areas in order to check on stock and customer orders and to generate delivery documents such as bills of lading. Some of the warehouse employees are also certified to make deliveries, on an as-needed basis, using the Employer's trucks. Warehouse employees assist customers in locating merchandise in the warehouse and by directing them to the sales counter. About half of the warehouse employees have prior cashier experience and, while the record does not reflect how frequently this occurs, they are able to ring up customers at the sales counter when needed. Warehouse employees typically work from 6 a.m. to 3 p.m.; from 7 a.m. to 4 p.m.; or from 8 a.m. to 5 p.m. Warehouse employees earn between \$12 and \$17 per hour, with most earning under \$14 an hour, and work an undisclosed amount of overtime.

Lead Warehouse Employee. While the record shows that there is an hourly-paid lead warehouse employee, it does not establish any specific differences between the work and terms and conditions of employment of this employee and the other warehouse employees, and no party seeks the exclusion of this employee.

Warehouse Receiving Employees. The parties stipulated that the warehouse receiving employees should be included in the unit. These four employees stock warehouse shelves and bins and

input receiving data into the Employer's computer system. They also pull orders for delivery. There is no evidence that they substitute for other employees. Warehouse receiving employees work from 6 a.m. to 3 p.m.; from 7 a.m. to 4 p.m.; or from 8 a.m. to 5 p.m. They are paid between \$14 and \$20 an hour.

The parties dispute the unit placement of one receiving employee—namely, Flora Chung. The record reflects that Chung spends 75% of her work time at a desk in the Employer's office inputting receiving and shipment entries into the computer system. She also generates documentation that is sent out with UPS and freight orders. She spends 25% of her work time in the warehouse verifying data and inquiring of other receiving employees about discrepancies in freight shipments with. She does not pull orders or use a forklift. Warehouse employee Joe Valle and Driver Sergio Reyes Raya testified that they see Chung in the warehouse about once or twice a week. Borgognoni testified that Chung is more highly skilled than other receiving employees in handling order entries and in using inventory software. She is paid on an hourly basis but the record does not reflect whether her rate of pay rate or hours differ from those of other receiving employees.

Tool Room Employees. The parties stipulated that the tool room employees should be included in any unit found appropriate. These three employees work in the fenced-in tool area in the warehouse, where expensive tools and merchandise are stored. Like other warehouse employees, they pull merchandise from the tool room to fill customer orders. The record does not show whether the tool room employees substitute for any other employees. The tool room employees work from 6 a.m. to 3 p.m.; from 7 a.m. to 4 p.m.; or from 8 a.m. to 5 p.m. They are paid between \$14 and \$21 per hour.

Inventory Control Employees. The parties dispute the inclusion of the inventory control employees in the unit, with the Petitioner seeking their exclusion and the Employer arguing for their inclusion. The three inventory control employees conduct a daily audit of all of the Employer's merchandise. Six hours of their workday is spent in the warehouse and yard, counting merchandise, and two hours is spent inputting data into the computer in the office area and communicating with vendors. One of the inventory control employees is trained to use a forklift. They each interact with all of the

warehouse employees and drivers in researching inventory discrepancies. They also regularly check orders pulled by drivers and warehousemen for accuracy and quality prior to delivery and assist in pulling and loading same-day delivery orders. They also spend a portion of their time stocking shelves and bins. Some of the inventory control employees also make deliveries on an as-needed basis.

Inventory control employees work from 6 a.m. to 3 p.m. They do not work multiple shifts because their work does not involve waiting on customers or regularly preparing shipments for delivery. In addition, their schedule is affected by the fact that their job involves communicating with vendors who are in the Eastern time zone. The record does not disclose the hourly pay rates of the inventory control employees or whether they work overtime.

Purchasing Assistant. As indicated above, the Employer employs one purchasing assistant whose job is to assist Manager Callahan by checking stock in the warehouse. The record contains little evidence regarding this employee, and the parties took no position on the unit placement of this position. However, it appears that the Employer would likely seek to have this employee included in the unit, as it is arguing for a wall-to-wall unit, excluding only supervisors and account managers. The Petitioner likely seeks the exclusion of this position because it is neither a warehouse employee, driver nor counter sales employee.

Cashier/Receptionists. The parties dispute the unit placement of the cashier/receptionists, with the Petitioner seeking their exclusion and the Employer arguing for their inclusion in the unit. The two cashier/receptionists work at a cashier's window near the sales counter. The record reflects that the cashier's window must be staffed at all times during regular business hours. Their job is: to process cash and credit sales for walk-in and will-call customers; to route all telephone calls coming into the facility; and, to page counter or inside salespersons. They interact with the counter sales and inside sales employees when an issue arises about an order or invoice and when counter and sales employees escort customers to the cashier's window and bring products to the window for will-call pick up by customers. The cashier/receptionists also have regular contact with drivers, who turn in paperwork to them at the end

of the drivers' routes, and they communicate with the drivers and dispatcher about the scheduling of deliveries. The cashier/receptionists seldom enter the warehouse and do not pull or load merchandise. There is no evidence that they substitute for employees in any other classifications or that any other employees substitute for them. One cashier works from 6 a.m. to 3 p.m., while the other works from 8 a.m. to 5 p.m.

Counter Sales Employees. The Petitioner seeks to include the counter sales employees in the petitioned-for unit, but would exclude them from its alternative unit. The Employer argues that they must be included in the unit in order for it to be an appropriate unit. The 14 counter sales employees work at a sales counter near the cashier's window. The Employer requires that the sales counter be staffed at all times during regular business hours. The job of counter sales employees is to recommend and sell products to customers over the telephone and in person when customers come into the facility. Counter sales employees develop relationships with some customers who ask for them by name. Counter sales employees write up customer orders, enter them into the computer, create invoices, and sometimes escort customers to the cashier's window. Counter sales employees also use computers to check on customer orders, product availability and delivery schedules. In addition, on a daily basis, they pull merchandise from the warehouse shelves for walk-in customers and assist walk-in or will-call customers in locating and loading merchandise. They also pull and load orders for same-day deliveries in the mornings and whenever the sales counter is not busy throughout the day. About 80% of the counter sales employees are trained to use forklifts and at least three of them were formerly warehouse employees. Borgognoni testified that warehouse employees tend to be promoted to either counter sales or driver positions.

About twice a week, counter sales employees substitute for inside sales employees either because inside sales employees are absent or the inside sales area is busy. Likewise, two of the inside sales employees work at the sales counter on a daily basis.

Counter sales employees work the same shifts as do the warehouse and warehouse receiving employees and dispatcher, and they are paid between \$14 and \$20 per hour, with most earning above \$15

per hour. They also receive SPIFFs, which are manufacturer's incentive payments made for the sale of particular products. The only other employees paid SPIFFs are inside sales employees. Inside sales employee Jeanette Brickley explained that a SPIFF would be a manufacturer giving a counter or inside sales employee \$5 for the sale of a particular drill. However, the record does not disclose how much counter sales employees or inside sales employees generally earn through SPIFFs.

Lead Counter Sales Employee. The record shows that the Employer employs a Lead Counter Sales Employee, Laura Poole, who spends about one or two hours a day in the office inputting data into a computer and handling other paperwork. The record does not show any other differences between the work and terms and conditions of employment of Poole and the other counter sales employees. No party appears to dispute the inclusion of this employee in the petitioned-for unit.

Inside Sales Employees. Petitioner seeks to exclude the counter sales employees from the petitioned-for unit, the Employer argues that they must be included in the unit in order for it to be an appropriate unit. Approximately eight inside sales employees work at cubicles equipped with computers and phones inside the Employer's office. The record reflects that the inside sales area must always be staffed during regular business hours. Inside sales employees take telephone calls from customers, vendors and account managers and input product orders into the computer. They answer customers' questions, make recommendations, give estimates and price quotes, and use computers to check on stock availability and delivery times. They also retrieve customer orders from the warehouse and deliver products to the cashier's window for will-call pick up or to the warehouse shipping area for delivery. While, generally, warehouse employees pull the products to fill the orders taken by inside sales employees, inside sales employee Jeanette Brickley testified that, about two or three times each day, she pulls products from the warehouse and, about ten to twelve times a day, she checks stock in the warehouse at the request of customers or account managers. According to Brickley, she spends about 10% of her time in the warehouse. One inside sales employee drives a fork lift, although this skill is not required for the inside sales job. Typically, inside sales employees possess more product knowledge and

experience than do counter sales employees. Like counter sales employees, part of the job of the inside sales employees is to develop relationships with customers who may ask for them by name.

As indicated above, throughout each work day, two of the inside sales employees work at the sales counter with counter sales employees. Counter sales employees also substitute twice a week for inside sales employees at times when the latter are absent or on vacation or when inside sales is very busy. As indicated above, the lead counter sales employee, on a daily basis, spends a couple of hours in the office area, inputting sales and credit transactions into the computer. Other than substituting for counter sales employees, there is no evidence that inside sales employees substitute for employees in any other classification.

Inside sales employee Brickley testified that she works from 7 a.m. to 4 p.m. Inside sales employees are paid between \$15 and \$25 per hour. Like the counter sales employees, inside sales employees receive SPIFFs, but there is no showing how much they earn through SPIFFs.

Territory Sales Assistant. The Employer employs one territory sales assistant who is an inside sales employee in training to become an account manager. As indicated above, account managers are excluded from the unit pursuant to the parties' stipulation. It does not appear that any party seeks the inclusion of the territory sales assistant in the unit.

Employer Policies and Benefits. All of the Employer's hourly employees are: subject to the same personnel policies and employee handbook; punch the same time clock; use the same lunchroom; and, receive the same fringe benefit package, which includes quarterly sales incentive payments made to all hourly employees based on the Employer's sales. All employees are required to wear clothing with the Employer's logo, which includes collared shirts, t-shirts, baseball hats, skull caps and safety vests. The record does not disclose whether there are any differences between the attire worn by employees in different job classifications. All employees have the same meal and break time periods, except for drivers, who take their half-hour lunch break while on the road.

Training. All employees receive the same orientation on the Employer's operation and the same training on general health, safety and governmental compliance matters. The Employer also conducts on-the-job training for new employees and does some cross-training of employees on other jobs, such as between warehouse and counter sales, but the record does not disclose the extent of such cross-training. Employees in different job classifications also receive some specialized training, such as sales-based training given only to counter and inside sales employees, which includes vendors coming into the facility to do product training. Training and certification in the use of a forklift, which requires that employees watch videos, have on-the-job training and take a practical exam, is given to employees in multiple job classifications in the following percentages: 100% of the warehouse employees and drivers; about 80% of the counter sales employees; 30% of the inventory control employees; and, 17% or one of the eight inside sales employees. Two of the drivers have Class B licenses and the rest have regular commercial licenses. All drivers also have Choice Point certifications and hazardous materials certifications. The dispatcher also has a commercial driver's license and is certified by Choice Point to drive the Employer's smaller vehicles.

Meetings. The Employer holds monthly meetings headed by Borgognoni or Zinc that are attended by all employees except for those who must remain to staff the counter sales, inside sales and cashier/receptionist areas. Warehouse employees and drivers also have weekly meetings conducted by Warehouse Manager Garcia and/or Borgognoni. Inside sales and counter sales employees also occasionally have separate meetings with Zinc and/or Borgognoni.

Equipment Used by Employees. Most of the hourly employees use the Employer's computer system to check on stock and orders or to generate delivery paperwork. All of the drivers and warehouse employees use forklifts, upright reach equipment, pallet jacks, hand carts and plastic wrap machines. Certification is required only to operate the forklift. About 80% of the counter sales employees use forklifts, pallet jacks and carts to pull orders from the warehouse for walk-in or will call customers. About one-third of the inventory control employees use forklifts to audit products in the warehouse. Only

one of the inside sales employees is trained to use a forklift and inside sales employees seldom use any equipment to retrieve customer orders. Counter sales and inside sales employees, cashier/receptionists and the dispatcher also use telephones regularly in their work. Most of the drivers drive smaller trucks and only two are licensed to drive trucks weighing over 26,000 pounds. Certain other employees, including the dispatcher and certain warehousemen and counter sales, also make deliveries of products on an as-needed basis, using the Employer's vehicles.

Interchange. As discussed above, counter and inside sales employees substitute for each other on a regular basis. Drivers, warehouse employees, tool room employees, receiving employees and the dispatcher all pull and load orders in the warehouse throughout the day. During the morning, other employees, including counter sales and inventory control employees also assist in pulling orders for same-day deliveries. Counter sales employees and inside sales employees also retrieve products from the warehouse for customers during the day. The dispatcher, as well as some of the warehouse, receiving and counter sales employees also make deliveries of products as-needed. Borgognoni testified that about three of the 14 counter sales employees (or about 20%) had previously worked in the warehouse. According to Borgognoni, the promotional track for new employees is generally from an entry warehouse position to that of a back-up driver or regular driver or to counter sales. He testified that he also hires counter and inside sales employees and drivers from outside sources.

Contacts Between Employees. The record is replete with evidence of contact between employees in all job classifications. Thus, the jobs of the warehouse employees, receiving employees, lead warehouse employee, tool room employees, dispatcher and drivers, all require regular daily interactions with each other in pulling and loading products for delivery and in stocking warehouse shelves. Counter sales and inventory control employees also assist the warehouse and driver employees on a daily basis to load same-day deliveries. Counter sales and inside sales employees enter the warehouse to retrieve orders and check on product availability. Cashier/receptionists have daily contact with counter sales employees who escort customers to their window to pick up will call merchandise or to

resolve discrepancies in paperwork and they also take paperwork from drivers when the drivers return from their routes. Counter sales employees have regular daily contact with the inside sales employees, two of whom work at their counter on a regular basis. Counter sales employees also substitute for the inside sales employees when that area is busy or short-staffed and they regularly use the computers in the inside sales area of the office to input data. Counter sales and inside sales employees also receive common separate training and attend separate meetings together. Inventory control employees have regular contact with warehouse employees when they assist in pulling and loading products for same-day deliveries, while they are in the warehouse several hours a day conducting their daily audit of the Employer's merchandise, and when they are checking orders that have been assembled by warehouse employees and drivers. All employees attend regular staff meetings together. Employees in all classifications also use the same lunch room and time clock.

Collective-Bargaining History. The record does not indicate any history of collective bargaining.

ANALYSIS

Section 9(b) of the Act provides that the Board "shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or *subdivision* thereof (emphasis added)." "The plain language of the Act clearly indicates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit." *Overnite Transportation*, 322 NLRB 723 (1996). In deciding whether a petitioned-for unit is "appropriate" under Section 9(b), the Board's discretion is broad. *NLRB v. Action Automotive*, 469 NLRB 490, 494 (1985), quoting *NLRB v. Hearst Publications, Inc.*, 322 US 111, 134 (1944). While a petitioner's desire in regard to unit composition and scope is relevant, it is in no way dispositive, *see Airco, Inc.*, 273 NLRB 348 (1984), because a proposed bargaining unit based on an arbitrary grouping of employees will always be inappropriate. *See, e.g., Moore Business Forms, Inc.*, 204 NLRB 552 (1973); *Glosser Bros., Inc.*, 93 NLRB 1343 (1951). Additionally, the Act prohibits the Board from establishing a

bargaining unit based solely on the extent of organization. *See, e.g., Motts Shop Rite of Springfield*, 182 NLRB 172 (1970). Where, however, a petitioned-for unit of employees has a community of interest that is distinct from the interests of the employees sought to be excluded from the bargaining unit, the Board holds such a unit to be an appropriate unit. *See Aerospace Corp.*, 331 NLRB 561, 562 (2000); *Ore-Ida Foods*, 313 NLRB 1016 (1994), *enfd.*, 66 F.3d 328 (7th Cir. 1995).

It is well established that a certifiable unit need only be an appropriate unit, not the most appropriate unit. *Morand Bros. Beverage*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); *Omni International Hotel of Detroit*, 283 NLRB 475 (1987); *P.J. Dick Contracting*, 290 NLRB 150 (1988); and *Dezcon, Inc.*, 295 NLRB 109 (1989). The Board does not compel a petitioner to seek the most appropriate or most comprehensive unit. “The Board’s declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining.” *Overnite Transportation*, 322 NLRB 723 (1996), citing *Black & Decker Mfg. Co.*, 147 NLRB 825, 828 (1964). The Board’s task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the ultimate unit. In making unit determinations, the Board first looks to the unit sought by the petitioner. If it is appropriate, the inquiry ends and the Board does not evaluate any competing unit contentions. If, however, the unit is inappropriate, the Board will scrutinize the employer’s proposal. *Dezcon, Inc.*, *supra* at 111. *Also see, Overnite Transportation*, 325 NLRB 612 (1998). In assessing the appropriateness of any proposed unit, the Board considers community of interest factors such as employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other terms and conditions of employment. *See, P.J. Dick Contracting Inc.*, *supra*.

In the instant case, the petitioned-for unit is comprised of the Employer’s warehouse employees, lead warehouse employee, receiving employees, tool room employees, drivers and counter sales employees and lead counter sales employee. Petitioner also takes an alternative position that, if this unit

is not an appropriate unit, then a unit comprised of only the warehouse employees, lead warehouse employee, receiving employees, tool room employees and drivers should be found an appropriate unit. The Employer takes the position that the only appropriate unit is a wall-to-wall unit, which would include, in addition to the warehouse employees, lead warehouse employee, receiving employees, tool room employees, drivers and counter sales employees and lead counter sales employee, the inside sales employees, cashier/receptionists, inventory control employees and the dispatcher. As indicated above, there are also three other employees whose unit placement requires determination—that is, Receiving Employee Flora Chung, a purchasing assistant, and a territory sales assistant.

Applying the community of interest criteria to the facts in this case, I have concluded that neither the petitioned-for unit nor the alternative unit urged by Petitioner is an appropriate unit and that the only appropriate unit is the “wall-to-wall” unit urged by the Employer, which includes all hourly employees except the managers and account managers, whom the parties have stipulated are properly excluded from the unit, and the territory sales employee, whom I find lacks a community of interest with the employees in the unit.

First, I agree with the Petitioner that the counter sales employees must be included in any unit of warehouse employees and drivers because they share such a substantial community of interest with the warehouse employees and drivers. This finding is based on the high degree of interchange of the counter sales employees with the warehouse employees, as demonstrated by the evidence that the counter sales employees pull and load products in the warehouse on a daily basis for same-day deliveries, whenever the sales counter is not busy, and while servicing customers. In addition, 80% of the counter sales employees are trained on the fork-lift and three of them were formerly warehouse employees. Further, the counter sales employees share common overall supervision, similar hours and other common terms and conditions of employment with warehouse employees and drivers.

However, I also find that the counter sales employees share a substantial community of interest with the inside sales employees. Thus, employees in these two classifications have a high degree of

interchange, with two of the eight inside sales employees regularly working on the counter on a daily basis and with counter sales employees substituting for inside sales employees about twice a week.

Further, the lead counter sales employee spends a portion of each work day inputting data in the inside sales area. The employees in both classifications are directly supervised by the Assistant Branch Manager and they share the same wages and other working conditions. Lastly, there is no history of collective bargaining that supports their separation. In sum, the warehouse and drivers' unit must include the counter sales employees in order to be an appropriate unit and, because the counter sales employees and inside sales employees share such a substantial community of interest that they cannot be separated, the warehouse and drivers' unit must include employees in both sales classifications in order to be an appropriate unit. See *United Rentals, Inc.*, 341 NLRB 540 (2004).⁸

This conclusion is further supported by evidence in the record showing that employees in all but one of the disputed classifications (cashier-receptionists) regularly overlap and interchange duties with other employees in the petitioned-for and alternative units proposed by Petitioner. Thus, warehouse employees sometimes assist customers at the sales counter, including, at times, ringing them up, and 50% of the warehouse employees have prior cashier experience. On a regular basis, the disputed dispatcher and the inventory control employees as well as the counter sales employees assist the warehouse employees and drivers in pulling orders for same-day local deliveries. Inventory control employees also check the orders of the drivers and warehousemen and make deliveries on an as-needed basis. The dispatcher is certified as a back-up driver for the Employer and also pulls and stocks orders on a regular

⁸ I find that the facts of this case are akin to those in *Industrial Supplies Company*, 237 NLRB 189 (1978), in which the Board found that sales employees were required to be included in a unit of warehouse employees, where the two groups shared a close community of interest based on the functional integration of the facility, the close proximity of work sites, common supervision and substantial daily contact. *Id.* at 190. On the other hand, the facts of this case are distinguishable from those in *Garrett Supply Company*, 165 NLRB 561 (1967), a case in which the Board excluded sales employees from a warehouse and drivers' unit. In *Garrett*, the evidence showed that the work performed by the sales employees in the warehouse was "infrequent, irregular and temporary," and was only incidental to their sales function. By contrast, the interchange in the instant case is far more extensive and is not merely incidental to the sales functions of the counter sales employees.

basis. Further, in addition to substituting as counter sales employees on a regular basis, inside sales employees also enter the warehouse multiple times each day to pull orders and check on whether products are in stock. In sum, with the exception of the cashier/receptionists, the record is replete with evidence showing frequent interchange and contact between employees in disputed classifications and those in the petitioned-for and alternative units urged by Petitioner.

The appropriateness of a wall-to-wall unit is also shown by the fact that all employees are subject to the same personnel policies and same overall management. While there are separate managers designated to oversee the warehouse, inventory control, and sales functions at the facility, Branch Manager Borgognoni testified that he personally oversees the entire operation on a daily basis. Borgognoni's schedule covers all but one hour of the work times of all hourly employees and he testified that he is in the warehouse two-thirds of his work-day. When he is not present, Assistant Manager Zinc has the same authority as Borgognoni over all employees at the facility. The dispatcher, whose position is one of those disputed, also has the same immediate supervisor (the warehouse manager) as the employees in both the petitioned-for and alternative units urged by Petitioner. All employees also work similar hours. While not all of the disputed employees work multiple shifts, as do the warehouse employees and drivers, they all work hours that overlap with those of the warehouse employees and drivers. Further, the pay rates of employees included in the petitioned-for and alternative units are comparable to those of the disputed employees. All employees receive similar benefits, use the same lunch room and time clock, and wear similar attire bearing the Employer's logo. Lastly, there is no collective-bargaining history to support either of the units urged by the Petitioner.

With regard to the two cashier/receptionists, while they seldom enter the storage areas of the warehouse, their work station is situated in the warehouse, not in the office, they have regular customer contact as do the included counter and inside sales employees, and they have regular contact with the counter sales and inside sales employees, who escort customers to them, discuss billing and other issues with them, and bring products to them for will-call pick up by customers. They also share common

management, receive the same fringe benefits, and are subject to the same terms and conditions of employment as all other hourly employees. In sum, I find that the record supports their inclusion in the unit, despite the fact that they do not perform regular warehouse functions as do the other disputed employees.

For the foregoing reasons, including the: high degree of interchange and contact; common overall management; similar hours, wages, benefits and other working conditions; and, the lack of any collective-bargaining history supporting the units urged by Petitioner, I find that the record does not support the petitioned-for and alternative units proposed by the Petitioner and that the only appropriate unit is the “wall-to-wall” unit urged by the Employer, excluding the stipulated supervisors and account managers. See *United Rentals, Inc.*, supra.

I have carefully considered the arguments and cases relied upon by the Petitioner but I do not find them to be persuasive in the circumstances of this case. The cases cited by Petitioner, including *Overnight Transportation Co.*, 325 NLRB 612 (1998), *Prince Gardner*, 231 NLRB 96 (1977), and *Mc-Mor-Han Trucking Co., Inc.*, 166 NLRB 700(1967), are distinguishable. *Overnight* involved the Board’s decision that mechanics need not be included in a petitioned-for unit of drivers, dock workers, yard jockeys and building maintenance employees, in order for that unit to be an appropriate unit, where the interchange consisted of one of 14 mechanics driving an employer vehicle three hours a day, four days a week. The Board in *Overnight* also noted that the exclusion of the mechanics from the unit was supported by their specialized skills and training. *Id.* at 613. In *Mc-Mor-Han*, the Board affirmed a petitioned-for unit of truck drivers, excluding mechanics, where one combination partsman/mechanic out of seven mechanics drove a truck on an irregular and infrequent basis and the driving of mechanics was otherwise limited to bringing vehicles into the garage for repair and road-tests. *Id.* at 70. The instant case does not involve skilled mechanics and the level interchange between the disputed and the petitioned-for or alternative unit employees far exceeds that involved in either *Overnight* or *Mc-Mor-Han*. Lastly, *Prince Gardner* involved the Board’s decision that a payroll clerk should be included in a petitioned-for

unit of office clerical employees, rather than a petitioned-for unit of production and maintenance employees, based on the fact that the payroll employee was not involved with production but rather with processing payroll, which is traditionally considered an office clerical function. By contrast, all of the disputed employees in the instant case are involved in service and sales, pulling, loading and/or delivery of the Employer's products and are not involved in traditional office functions such as handling payroll.

Based on the record in this case, I find that the only appropriate unit in the instant case is a unit comprised of all full-time and regular part time drivers, warehouse employees, lead warehouse employees, warehouse receiving employees,⁹ tool room employees, dispatchers, inventory control employees, counter sales employees, lead counter sales employees, inside sales employees, purchasing assistant,¹⁰ and cashier/receptionist employees; and excluding all account managers, territory sales assistant,¹¹ the branch manager, assistant branch manager, warehouse manager and purchasing/inventory control manager, guards and supervisors as defined in the Act.

CONCLUSIONS AND FINDINGS

Based upon the entire record, I conclude and find as follows:

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

⁹ I am including Flora Chung in the unit as a receiving employee. Although Chung spends a substantial portion of her time doing computer entries of receiving data, she spends at least 25% of her work time on the floor of the warehouse, and her work is integrated with that of other receiving employees. She also shares common supervision with unit employees and common terms and conditions of employment with them, as described above. I have, therefore, concluded that she is properly included in the unit.

¹⁰ I am including the purchasing assistant in the unit because the record shows that this employee is hourly-paid and works in the warehouse on a regular basis. Although the record is sparse concerning the terms and conditions of this employee, I am including her because, otherwise, she would be the only unrepresented hourly employee. See *United Rentals, Inc.*, 341 NLRB at 542, n 11.

¹¹ I have decided to exclude the territory sales assistant because that individual is an inside sales employee who is in training to become an account manager, which is an excluded position.

2. The parties stipulated, and I find, that the Employer is an employer as defined in Section 2(2) of the Act, is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning 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 Sections 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part time drivers, warehouse employees, lead warehouse employees, warehouse receiving employees, tool room employees, dispatchers, inventory control employees, counter sales employees, lead counter sales employees, inside sales employees, and cashier/receptionist employees employed by the Employer at its San Francisco, California facility; and excluding all account managers, territory sales assistant, branch manager, assistant branch manager, warehouse manager and purchasing/inventory control manager, 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 **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 853, or no union**. 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, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA **94103**, **on or before May 2, 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,¹² by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of **two** 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 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, DC 20570-0001. This request must be received by the

¹² To file the 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, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the "Accept" button. The user then completes a form with information such as the case name and number, attaches the document containing the election eligibility list, and clicks 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.

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Board in Washington by May 9, 2008. The request may be filed electronically through E-Gov on the Board's web site, www.nlrb.gov,¹³ but may not be filed by facsimile.

DATED AT San Francisco, California this day 25th day of April 2008.

/s/ Joseph P. Norelli

Joseph P. Norelli, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

¹³ Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.