

Airco, Inc. and Chauffeurs & Sales Drivers, Local Union No. 402, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner.
Case 10-RC-12839

14 December 1984

**DECISION ON REVIEW AND
DIRECTION**

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 28 September 1983 the Regional Director for Region 10 issued a Decision and Direction of Election in the Petitioner's requested unit of production and maintenance employees at the Employer's Cherokee, Alabama facility, including plant operators, truckdrivers, and mechanics. The Employer had contended that the operators were not properly included in the unit because they did not share a community of interest with the other requested employees. The Employer filed a timely request for review and the Board granted it by telegraphic order of 28 October 1983. No briefs were filed on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review, and reaches the following conclusions:

The Employer manufactures industrial gases by a largely automated process; the operators' duties consist principally of monitoring the equipment. The operators also fill trucks belonging to other employers, and complete various paperwork associated with those pickups. The Employer's drivers fill their own trucks and deliver the gas to the Employer's customers, spending most of their working time on the road. The mechanics work at the Cherokee facility, maintaining and repairing the trucks. There are approximately 26 drivers, 2 mechanics, and 4 operators.

The Regional Director found that the Employer's production department, employing the operators, and the distribution department, including the drivers and mechanics, were largely separate. The departments are separately housed and the employees have little contact across departmental lines, although drivers enter the production department briefly in connection with filling their trucks. The departments are separately supervised at both the immediate and facility levels. There has been no interchange, and seniority is separate. Pay is determined independently by department and paychecks are distributed separately. Each department buys

uniforms on its own and furnishes them to its employees.

Drivers and operators receive the same training in operation of the filling equipment, but otherwise the skills and training of the three groups of employees are different. Operators must have experience with production equipment like the Employer's, drivers must have a class A chauffeur's license and meet Transportation Department requirements, and mechanics must have class A diesel mechanic certification. The three groups of employees also work different schedules and are paid by different methods. The drivers are paid by mileage and hourly but receive no overtime. The mechanics and operators are paid hourly with overtime; they work a 40-hour week except that 1 week a month operators work 48 hours. The two mechanics work different shifts and different days of the week. The operators work rotating shifts around the clock, and record their own time whereas the other employees use a timeclock.

The Regional Director concluded that "while . . . a separate unit of truckdrivers and mechanics may be appropriate, where, as here, no other union is claiming to represent the truckdrivers . . . they may be included in a production unit where the petitioning union so desires . . . Further, in view of the close relationship between the truckdrivers and the mechanics and the fact that to exclude the mechanics would result in a residual unit of two unrepresented employees, I find that the mechanics should be included in the overall unit."

We agree with the Regional Director that the Petitioner's requested unit is an appropriate one, but not for the reasons he stated. His decision implies that a petitioner's desires alone will determine the placement of truckdrivers in or separate from a production and maintenance unit. We agree with the Employer that that is not the correct standard; there are no per se rules to include or exclude any classification of employees in any unit. Rather, we examine the community of interest of the particular employees involved, considering their skills, duties, and working conditions, the Employer's organization and supervision, and bargaining history, if any, but no one factor has controlling weight. See *E. H. Koester Bakery Co.*, 136 NLRB 1006, 1009-11 (1962); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136-138 (1962) (severance petition).¹

¹ We disavow the statement in *Keystone Pretzel Bakery*, 242 NLRB 492, 505-506 (1979), enfd 696 F.2d 257 (3d Cir. 1982), that the placement of truckdrivers in a production and maintenance unit "depend[s] largely upon the wishes of the petitioning union." We find that the correct standard was applied in *Marks Oxygen Co.*, 147 NLRB 228 (1964).

We will continue to consider a petitioner's desires relevant, for the reasons we stated in *Marks Oxygen* and elsewhere *Mc-Mor-Han Trucking*,
Continued

Nonetheless, Congress expressly contemplated the plantwide unit in Section 9(b), and we have held that “[a] plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees.” *Kalamazoo Paper Box Corp.*, 136 NLRB at 136. The standard is the same but the burden is on the Employer to demonstrate that the interests of a given classification are so disparate from those of other employees that they cannot be represented in the same unit. *E. H. Koester Bakery*, 136 NLRB at 1011. Here the Petitioner’s request includes all the Employer’s employees whom Board policy allows to be included in a production and maintenance unit.

The presumption that this unit is appropriate has not been rebutted. We recognize that there are three separate groups of employees—drivers, mechanics, and operators—each of which has very little in common with either of the other two. While the drivers and mechanics are included in the same department by the Employer, they have little contact, and their skills, training, and working conditions are different. Similarly, both drivers and operators fill trucks and are trained by the Employer to do that, and the two groups have occasional brief contact in the process. While the employees in different classifications thus have little contact, it is just as true that no two employees in the *same* classification have much contact. That factor therefore cannot negate a community of interest sufficient to allow collective representation.

We also note that the employee complement of 32 is small, and that the three classifications are

166 NLRB 700, 701 (1967), *Metropolitan Life Insurance Co.*, 156 NLRB 1408, 1411-1413 (1966), on remand from court of appeals in light of *NLRB v Metropolitan Life Insurance Co.*, 380 U.S. 438, 441-442 (1965). That does not, however, obviate the need to show some community of interest on the facts of the specific case.

Chairman Dotson notes that where competing petitioners request different units, the relevancy of their desires will require a different analysis. Otherwise the Chairman finds it adds nothing to the analysis to say that no petitioner desires a different unit, as the Regional Director noted here

functionally integrated. The related functions of drivers and mechanics are one basis for their frequent inclusion in the same unit, and the Employer does not contest that inclusion.² As noted, though, the drivers here have as much in common with the operators as they do with the mechanics.

Indeed, the alternatives to a plantwide unit here are not favorable. The Board does not favor organization by department or classification, and it is doubtful that either the mechanics or operators are a craft. A combined unit of the two would be even less appropriate on community-of-interest grounds than either alone. Any of these units could thus be called residual, as the Regional Director noted, and the Board has normally preferred to avoid creating such units where possible.

For all these reasons we find the plantwide unit of drivers, mechanics, and operators appropriate. Because the Regional Director directed an election in this unit we will remand this proceeding to him with directions to open and count the ballots and to issue a certification.

DIRECTION

It is directed that the Regional Director for Region 10 shall, within 10 days from the date of this Decision on Review and Direction, open and count the ballots of the employees who voted in the election conducted 28 October 1983. The Regional Director shall prepare and serve on the parties a tally of ballots and, unless there are determinative challenges or timely objections filed, he shall issue the appropriate certification.

IT IS FURTHER DIRECTED that this proceeding is remanded to the Regional Director for further action pursuant to this Decision on Review and Direction.

² See, e.g., *Carpenter Trucking*, 266 NLRB 907 (1983), *Transportation Enterprises*, 229 NLRB 1248, 1249 (1977), *Brunswick Meat Packers*, 164 NLRB 887, 899 (1967)