UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CUMBERLAND FARMS, INC.
Employer

and

INDUSTRIAL EMPLOYEES ASSOCIATION, INC.
Petitioner Case No. 29-RC-066906

and

PETROLEUM TRADES EMPLOYEES UNION,
affiliated with ATLANTIC INDEPENDENT UNION,
affiliated with TEAMSTERS LOCAL 312
Intervenor[1]

DECISION AND DIRECTION OF ELECTION

Cumberland Farms, Inc. ("the Employer") is engaged in distributing and selling gasoline and other petroleum products to stores or gas stations which, in turn, sell those products to retail customers. On October 17, 2011, the Industrial Employees Association ("IEA" or "the Petitioner") filed a petition under Section 9(c) of the National Labor Relations Act ("the Act"), seeking to represent a unit of approximately 25 truck drivers and mechanics who currently work out of a truck terminal in Inwood, New York. Approximately 16 of those employees already worked at the Inwood terminal before October 1, 2011, where they were represented for collective bargaining purposes by the Petroleum Trades Employees Union, affiliated with Atlantic Independent Union, affiliated with Teamsters Local 312 ("PTEU" or "the Intervenor"). The other 9 of those

[1] The Petroleum Trades Employees Association's intervention is based on its status as the collective bargaining representative of some of the unit employees involved herein, as described in more detail below.

25 employees previously worked for the Employer out of a terminal in Brooklyn, New York, where they were represented by IEA. On or about October 1, 2011, the Employer closed the Brooklyn terminal and essentially transferred the 9 employees from Brooklyn to Inwood. Thus, the IEA petitions for an election in a combined unit of the 16 drivers and mechanics who already worked at the Inwood facility, plus the 9 drivers who transferred from Brooklyn to Inwood. However, the Intervenor PTEU contends that its 2011 – 2013 collective bargaining agreement with the Employer covering the drivers and mechanics employed at the Inwood facility serves to bar an election at this time.

In lieu of a hearing on this issue, the parties entered into a written stipulation of facts. The stipulation is attached to this Decision as Appendix A. Pursuant to Section 3(b) of the Act, the Board has delegated authority in this proceeding to the undersigned Regional Director.

For the reasons discussed below, I conclude that the transfer of 9 employees into the Inwood unit raises a question concerning representation, and that the Intervenor's collective bargaining agreement does not bar an election in the larger, combined unit. I will therefore direct an election in the petitioned-for unit, with both unions on the ballot.

FACTS

The facts, as summarized in Appendix A, are undisputed.

Before October 1, 2011,[2] the Employer had three locations relevant to the instant case. They were three truck terminals, located in Inwood, Brooklyn and Holtsville, New York.

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2 All dates are in 2011, unless otherwise indicated.

As noted above, PTEU has represented a unit of drivers and mechanics ("technicians") employed at the Employer's Inwood facility. The collective bargaining agreement between PTEU and the Employer is a two-year contract, effective by its terms from April 1, 2011, to March 31, 2013. The contract describes the bargaining unit as including "all drivers, lead drivers, technicians [and] senior technicians." As noted above, the PTEU unit consisted of 14 drivers and two technicians. They were supervised by Joseph Becker. The drivers drove their tankers and made deliveries primarily in Nassau and Suffolk Counties, with some deliveries in parts of New York City. The technicians serviced all of the Employer's vehicles used at all three terminals.

Before October 1, employees at the other two truck terminals – Brooklyn and Holtsville – were represented in a combined unit by IEA. Specifically, before October 1, there were nine drivers employed at the Brooklyn terminal, and 10 drivers employed at the Holtsville terminal. The 19 drivers in the IEA unit were supervised by Joseph Lech. A three-year collective bargaining agreement between IEA and the Employer, effective by its terms from September 10, 2010, to September 9, 2013, describes the bargaining unit as including all "gasoline delivery drivers and truck mechanics" employed at the Brooklyn and Holtsville terminals, although it appears that no mechanics were employed at those locations. The drivers in Brooklyn made deliveries in parts in New York City and Nassau County, i.e., generally in more western areas than the Inwood drivers.

According to the parties' stipulation, the Employer notified both unions in August that it intended to merge all three locations into a combined terminal at Inwood. However, after subsequent negotiations with IEA, the Employer agreed to continue its

Holtsville operation (where the 10 drivers would continue to be represented by IEA), and to merge only the Brooklyn operations into the Inwood operations.

Effective October 1, the Employer closed its Brooklyn facility and transferred the nine drivers to the Inwood facility. The unit of 16 drivers and technicians who were represented by PTEU continued to be supervised by Becker, and the nine drivers who had transferred from Brooklyn continued to be supervised by Lech. Otherwise, the job duties of the drivers in Inwood (now 23 in number) essentially remained the same – loading their tankers with petroleum products and delivering the products to various locations. However, all the drivers work from the Inwood facility now, and they are assigned to make deliveries in any locations in the combined geographic area, i.e., from New York City boroughs in the west to Suffolk County in the east. The two mechanics continue to service all the vehicles, as they did before.

In late October, one driver who had worked at the Inwood terminal in the unit represented by PTEU resigned. On November 1, one driver from the Holtsville terminal, represented by IEA, resigned. At the time of the parties' stipulation in this case, the Employer had not yet replaced those drivers. However, the Employer stated that it intended to replace those drivers in the very near future. Thus, for purposes of this Decision, it is assumed that the numbers of employees is the same, specifically:

> No employees at the closed Brooklyn terminal;
>
> 10 drivers in Holtsville, still represented by IEA there;
>
> a total of 25 employees at the Inwood facility: 14 drivers and two mechanics who were represented by PTEU, plus the 9 drivers who had transferred from Brooklyn.

In terms of percentages, PTEU represented 64% of the 25 unit employees currently employed at the Inwood facility, and IEA represented 36%.

Thus, by filing its petition, IEA seeks an election among the 25 employees now employed at the Inwood facility, in a combined unit. The parties do not dispute that a unit of drivers and technicians employed at the Inwood facility is an appropriate unit for the purposes of collective bargaining. However, PTEU contends that the transferred drivers are now covered by the 2011 - 2013 PTEU contract, and that the contract bars an election at this time.[3] By contrast, the Petitioner contends that the combination of 25 employees (9 plus 16), who were represented by two different unions, raises a question concerning representation. The Petitioner contends, therefore, that the 25 employees employed at Inwood facility must be given an opportunity to choose their representative. The Employer takes no position on the issue.

DISCUSSION

At the outset, it should be noted that PTEU's post–hearing brief strives to distinguish between a "transfer" of employees to an existing unit and a "merger" of two units. However, the label used to describe the Employer's combination of employees at the Inwood facility has relatively little significance. The real issue is whether PTEU's incumbent status at the Inwood facility entitles it to "claim" the nine drivers brought in from Brooklyn as automatically part of the existing PTEU unit (and therefore automatically covered by the PTEU contract), without those 9 employees having an

[3] Although PTEU does not use the word "accretion," its argument essentially amounts to an accretion argument.

opportunity to choose their representative. Ultimately, although PTEU seems to avoid using the word "accretion," this case raises an accretion issue. Under well-established labor law principles, PTEU's contract could not serve as a bar *unless* the employees from Brooklyn had accreted to PTEU's existing unit at Inwood.

In determining appropriate bargaining units and related accretion issues, the Board weighs such factors as bargaining history, functional integration of operations, centralization of management and administrative control, similarity of duties and skills, interchange of employees, common supervision and working conditions. The Board follows a particularly restrictive policy in accreting employees to an existing bargaining unit, since it precludes those employees from exercising their right to free choice regarding union representation. Towne Ford Sales, 270 NLRB 311 (1984), *enfd.* 759 F.2d 1477 (9th Cir. 1985). In cases where bargaining units represented by two different unions have been merged into one unit, the Board will not find an accretion unless one union clearly predominates. Martin Marietta Chemicals, 270 NLRB 821 (1984).

In Martin Marietta, *supra*, the employer employed a unit of 159 employees represented by United Steelworkers of America at one facility (the "north plant"), where it quarried and manufactured lime products. Another employer employed a unit of 93 employees represented by United Cement Workers, Local 99, at an adjacent quarry (the "south plant"). After Martin Marietta acquired the south plant and hired all the workers there, it brought both plants under one central administration, including one personnel director responsible for labor relations of the combined facilities. The employer recognized the Steelworkers as representative of the unit, which now consisted of both north plant employees (63%) and south plant employees (37%). The employer

physically joined the two quarries, with a ramp between them to move employees and equipment. Employees at both plants performed similar functions, with similar skills and equipment. Although most of the south plant employees continued to work at that plant, there was significant employee interchange between the two facilities. In those circumstances, the Board found that the previous separate identities of the two units had been "obliterated," and that one combined bargaining unit was "the sole appropriate unit." Id. at 822. However, since the Board also found neither unit "sufficiently predominant" to remove the question concerning representation, it ordered an election in the overall unit with both unions appearing on the ballot. *See also* Massachusetts Electric Co., 248 NLRB 155 (1980).

Thus, assessing a possible accretion in a situation with two incumbent unions requires an analysis of both quality and quantity. In addition to the traditional community of interest factors, the *number* of employees must be weighed in order to assess whether one union clearly "predominates." The Board has not specified a percentage required to establish such predominance. In Boston Gas Co., 235 NLRB 1354 (1978)(known as "Boston Gas II"), an incumbent union who had represented 70% of the later-combined unit was found to be "sufficiently predominant." Similarly, in Metropolitan Teletronics Corp., 279 NLRB 957, 960 (1986), *enfd.* 819 F.2d 1130 (2nd Cir. 1987), 63% was sufficient to show the recognized union's predominance, where only 5% had been represented by the other union, and the rest were new hires. However, in Martin Marietta, *supra*, 63% was deemed insufficient to establish the recognized union's predominance, where the other union had represented 37%.

In the instant case, although the Employer has maintained separate supervision for the former Brooklyn drivers now at Inwood, the drivers operate as a single unit in every other respect. There is no dispute that, qualitatively, the group of 25 employees now in Inwood constitutes an appropriate, combined unit. However, I find that, quantitatively, the Brooklyn drivers constitute too large a portion to be considered a mere accretion to the pre-existing Inwood/PTEU unit. Or, stated differently, PTEU's prior representation of 64% of the current 25 unit employees at Inwood this percentage is not "sufficiently predominant" under Martin Marietta, *supra*, to warrant a finding of accretion and contract bar. Thus, I agree with the Petitioner's contention that the October 2011 transfer of 9 drivers from Brooklyn to Inwood raised a question concerning representation via-à-vis the new group, and that employees in the newly-combined group are entitled to choose their representative.

Accordingly, based on the foregoing, I will direct an election in the petitioned-for unit.

CONCLUSIONS AND FINDINGS

Based upon the parties' factual stipulation in this proceeding, the undersigned finds and concludes as follows:

1. The parties stipulated that Cumberland Farms, Inc. is a domestic corporation, with its principal office and headquarters located at 100 Crossing Boulevard, Framingham, Massachusetts. As described above, the record also indicates that the Employer has places of business located in the State of New York. It is engaged in the distribution of gasoline and other petroleum products to various stores which, in turn, sell

those products to customers on a retail basis. During the past year, which period represents its annual operations generally, the Employer purchased and received at its Massachusetts facility, goods valued in excess of $50,000 directly from points outside the Commonwealth of Massachusetts.

Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

2. The parties stipulated that both the Industrial Employees Association, Inc. and the Petroleum Trades Employees Union, affiliated with Atlantic Independent Union, affiliated with Teamsters Local 312, are labor organizations as defined in Section 2(5) of the Act. Both labor organizations claim to represent certain employees of the Employer.

3. A question concerning 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.

4. The parties stipulated, and I hereby find, that the following employees constitute a unit appropriate for the purposes of collective bargaining:

> All full-time and regular part-time drivers, lead drivers, technicians (mechanics) and senior technicians, employed by the Employer at its facility located at 464 Doughty Boulevard, Inwood, New York, but excluding all other employees, guards and supervisors as defined in Section 2(11) of 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 they wish to be represented for purposes of collective bargaining by the Industrial Employees

Association, Inc., or by the Petroleum Trades Employees Union, affiliated with Atlantic Independent Union, affiliated with Teamsters Local 312, or by neither labor organization. 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. The parties have stipulated, and I hereby find, that the Employer's seasonal employees who were temporarily laid off for the winter season, but who have a reasonable expectation of recall, are also eligible to vote. 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 a 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 who are employed in the unit 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). This 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.).

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **December 27, 2011.** No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the 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.nrlb.gov,[4] by mail, or by facsimile transmission at (718) 330-7579. The burden of establishing the timely filing and receipt of the list will continue to be on the sending party.

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[4] To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic filing, 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 three (3) working days prior to 12:01 of the date 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, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **January 3, 2012.** The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov,[5] but may **not** be filed by facsimile.

Dated: December 20, 2011.

David Pollack
Acting Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

5 To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. 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 Agency's website, www.nlrb.gov.

Cumberland Farms, Inc., Case No. 29-RC-066906

The Parties stipulate to the following:

1. The correct legal names of the parties are as follows:
   - Employer: Cumberland Farms, Inc.
   - Petitioner: Industrial Employees Association, Inc.
   - Intervenor: Petroleum Trades Employees Union affiliated with Atlantic Independent Union affiliated with Teamsters Local 312

2. Both the Petitioner and the Intervenor are organizations in which employees participate, and which exist, in whole or in part, for the purpose of dealing with employers concerning wages, hours and other terms and conditions of employment. The Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the National Labor Relations Act.

3. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

   Cumberland Farms, Inc. ("the Employer" or "the Company") is a corporation with its principal office and headquarters at 100 Crossing Blvd, Framingham, MA 01702. The Employer is engaged, variously, in the distribution of gasoline and other petroleum products to stores which offer it for sale at retail to the general public. These products are delivered by means of tanker trucks operated by drivers who are employees of the Employer, as well as by independent carriers. During the previous twelve months, which period is representative of its operations generally, the Employer derived gross revenues exceeding $1,000,000 and purchased and received at its Massachusetts facilities goods valued in excess of $50,000 directly from points located outside the Commonwealth of Massachusetts.

4. The Employer maintains truck terminals at 464 Doughty Boulevard, Inwood, NY ("the Inwood terminal" or "Inwood"), and 586 Union Ave., Holtsville, NY ("the Holtsville terminal" or "Holtsville"). Until October 1, 2011, the Employer also maintained a truck terminal at 25 Paidge St., Brooklyn, NY ("the Brooklyn terminal" or "Brooklyn"). The Company does not own the Brooklyn, Inwood or Holtsville terminals. Motiva owns Brooklyn, Global owns Inwood, and Northville Industries owns Holtsville.

5. (a) The Employer is party to a collective bargaining agreement ("the PTEU CBA") with the Intervenor, Petroleum Trades Employees Union ("PTEU") covering the following unit of employees at Inwood, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, for the period April 1, 2011 to March 31, 2013:

APPENDIX A

All drivers, lead drivers, technicians, senior technicians and [sic] employed by the Company at its Inwood, New York facility.[1]

(b) At all material times, the Intervenor has maintained and enforced the collective bargaining agreement referred to above in subparagraph 5(a).

6. (a) The Employer is party to a collective bargaining agreement ("the IEA CBA") with the Petitioner, Independent Employees Association ("IEA") covering the following unit of employees, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, for the period September 10, 2010 to September 9, 2013:

All full-time and regular part-time employees in the following classifications and locations: Gasoline Delivery Drivers and Truck Mechanics located at 25 Paidge Street, Brooklyn, New York, and 586 Union Avenue, Holtsville, New York. Excluded: Confidential secretarial employees, plant operators, all other employees, guards, and supervisors as defined in the National Labor Relations Act ("Act").

(b) At all material times, the Petitioner has maintained and enforced the collective bargaining agreement referred to above in subparagraph 6(a).

7. The PTEU has been party to a series of collective bargaining agreements with employers covering unit employees at Inwood since at least 1970. The employees in the bargaining unit at Inwood have been represented by the PTEU and employed by Mobil, ExxonMobil, and since February 2011, the Employer. In the summer of 2009, the PTEU also represented employees employed by the Employer in a separate bargaining unit at a different Inwood facility owned by Motiva (the "Motiva Inwood facility"). However, the Employer shut down its operation at the Motiva Inwood facility in the summer of 2009, and the remaining bargaining unit employee, William Hubbard, transferred to the Holtsville terminal, where he was included in the IEA bargaining unit at Holtsville at the bottom of the seniority list.

8. The IEA has been party to a series of collective bargaining agreements covering unit employees at the Brooklyn and Holtsville locations with the Employer since 2003, and with the Employer's predecessors since at least 1980.

9. As of August 22, 2011, there were nine (9) bargaining unit employees employed at the Brooklyn terminal, ten (10) bargaining unit employees employed at the Holtsville terminal and sixteen (16) bargaining unit employees employed at the Inwood terminal. All unit employees were drivers except for two (2) technicians in the PTEU unit. By letter dated August 22, 2011, the Employer informed the IEA and the PTEU of its

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[1]The parties' collective bargaining agreement does not list exclusions. Additionally, the unit set forth in the contract contains the following qualification: "[The parties agree to list the job classifications, but the actual titles of each job classification may change]."

intention to merge the gasoline delivery operations located at Brooklyn and Holtsville with those located at Inwood, effective October 1, 2011.

10. On or about August 25, 2011, the IEA demanded that the Employer recognize it as the bargaining representative for employees in a merged unit at Inwood. This demand was rejected by the Employer.

11. After negotiations with the IEA over the effects of the proposed transfer/merger, the Employer combined the gasoline delivery operations of the Brooklyn terminal with those of the Inwood terminal at Inwood, and maintained the Holtsville operations at Holtsville.

12. Effective October 1, 2011, all nine (9) of the IEA bargaining unit employees at Brooklyn were moved to Inwood. As of that date, there were sixteen (16) employees in the PTEU bargaining unit at Inwood, consisting of 14 drivers and 2 technicians. One PTEU driver at Inwood resigned on October 21, 2011 and has not been employed by the Employer since then. One IEA driver at Holtsville resigned on November 1, 2011. The Employer intends to hire replacements for both drivers in the very near future.

13. Prior to this transfer/merger, IEA Brooklyn drivers picked up their tankers from and returned their tankers to the Brooklyn facility; and PTEU Inwood drivers picked up their tankers from and returned their tankers to the Inwood facility. The Brooklyn drivers and the Inwood drivers performed the same job duties at their respective terminals, which consisted of loading tankers with petroleum product and making several deliveries throughout the shift. IEA Brooklyn drivers generally made deliveries to stations in Queens, Brooklyn, the Bronx, and Nassau County. PTEU Inwood drivers generally made deliveries to stations in Nassau and Suffolk County, with some deliveries in Brooklyn, Queens, and the Bronx. Subsequent to this transfer/merger both groups of drivers continue to perform the same job duties; however, both groups of drivers now operate in and out of the Inwood location only, and all drivers are assigned to deliveries in any geographic area. Prior to the transfer/merger, the two technicians in the PTEU unit serviced all of the vehicles used at Inwood, Brooklyn and Holtsville, and they have continued to do this subsequent to the transfer/merger. The job duties of mechanics and technicians are the same. The job duties of drivers and gasoline delivery drivers are the same.

14. Prior to the merger, the IEA Brooklyn unit employees and the IEA Holtsville unit employees were supervised day-to-day by Joseph Lech and the PTEU Inwood employees were supervised day-to-day by Joseph Becker. Since the merger, Lech has continued to supervise the IEA Brooklyn Employees who transferred to Inwood, as well as the IEA Holtsville unit employees, and Becker has continued to supervise the PTEU Inwood unit employees. Becker also supervises the IEA Brooklyn employees who transferred to Inwood when Lech is not present at Inwood.

15. Both before and after the transfer/merger of operations between Brooklyn and Inwood, Lech and Becker reported to Emmanuel Estevez, Transportation Manager. Estevez

reports to Edward Potkay, Director of Transportation & Fleet Services, and Potkay reports to D. Gregory Scott, SVP of Terminal & Petroleum Distribution Operations.

16. Since October 1, 2011, the Employer has employed no one at the Brooklyn terminal in any of the classifications covered by the IEA contract or the PTEU contract and has ceased to maintain an office at that location. The Employer has no present intention to resume operations at the Brooklyn terminal.

17. On October 17, 2011, the Petitioner filed a petition seeking to represent all employees in the following unit, which is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act and defined as follows:

> All full-time and regular part-time gasoline delivery drivers and truck mechanics employed by the Employer at its facility located at at 464 Doughty Boulevard, Inwood, New York; excluding office clerical employees, managers, guards, and supervisors as defined in the Act.

18. The current collective bargaining agreements between the Employer and the Petitioner, and the Employer and the Intervenor, are part of the record. Additionally, the parties stipulate to the inclusion of the Board's formal papers to the record.

19. No party disputes that the unit set forth in paragraph 5(a) above continues to constitute an appropriate unit within the meaning of Section 9(b) of the Act. Rather, the Petitioner asserts that the merger of the Brooklyn terminal with the Inwood terminal presents a question concerning representation of the Inwood Unit, and that the Petitioner's petition should therefore be processed to an election.

20. The Intervenor asserts that its collective bargaining agreement with the Employer for the Inwood Unit constitutes a bar to an election, and therefore the Petitioner's petition is untimely and should be dismissed.

21. The Employer takes no position with respect to whether a question concerning representation has been raised or whether the Intervenor's contract bars the processing of the instant petition.

21. The Parties agree that this stipulation of facts constitutes the record, and the parties waive their right to present any witnesses, additional evidence, or oral arguments.

22. Briefs on the matters at issue are due on November 14, 2011. If any party wishes an extension of time to file briefs, timely requests should be made to the Regional Director.

/s/ Jessica D. Ochs, 11/3/11	/s/ Phillip J. Moss, 11/4/11	/s/ Lance M. Geren, 11/3/11
Petitioner/date	Employer/date	Intervenor/date