

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

CONTRACTORS HAULING, LLC

Employer

and

Case 4-RC-070118

GENERAL TEAMSTERS LOCAL UNION 326¹

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Contractors Hauling, is a trucking company that transports sand and gravel to customers from a facility in Bear, Delaware. The Petitioner, Teamsters Local 326, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's Drivers.

A Hearing Officer of the Board held a hearing, but the Employer did not appear at the hearing nor provide any evidence. The hearing dealt with the issues of whether the Employer is subject to the Board's jurisdiction, whether the Petitioner is a labor organization, and whether the petitioned-for unit is appropriate. Neither party filed a brief.

I have considered the evidence, and, as discussed below, I have concluded that: the Employer is engaged in interstate commerce sufficient to support the Board's exercise of its jurisdiction; the Petitioner is a labor organization within the meaning of Section 2(5) of the Act; and the petitioned-for unit is appropriate. Accordingly, I have directed an election in the petitioned-for unit.

I. NOTICE OF HEARING TO THE EMPLOYER

On December 6, 2011,² Region 4 of the National Labor Relations Board (the Region) served the Employer with a Notice of Representation Hearing and related documents by first-class mail and sent copies of these documents to the Employer by facsimile transmission. The Notice of Hearing set a hearing date of December 15. The documents were mailed to the Employer's business address listed on the petition, but they were returned to the Region by the

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

² All dates are in 2011 unless otherwise indicated.

Postal Service. On December 9, the Hearing Officer emailed these documents to Nick Ferrara III, who was listed on the petition as the Employer's representative. On that date, the Hearing Officer also sent an email to Ferrara III containing a list of some of the topics that would be covered at the hearing.³ In response, Ferrara III requested a postponement of the hearing, and on December 14, the Region served the parties by first-class mail with an Order Rescheduling Hearing, which postponed the hearing until December 20. The Region mailed the Order to the Employer's office in New Castle, Delaware, and the Hearing Officer also sent it by email to Ferrara III.

On the morning of December 20, Ferrara III sent the Hearing Officer an email indicating that he had planned to attend the hearing but could not do so because his absence "would have caused a severe hardship on my trucking company."⁴ The Employer did not send any representative to the December 20 hearing or make another request for postponement.

II. JURISDICTION

Facts

Driver Richard R. Reynolds testified that the Employer currently employs 15 to 18 Drivers on a full-time basis. They work out of a facility (the Facility) in Bear, Delaware. Reynolds testified that during the last two years the Employer has had a contract with a Pennsylvania company, County Line Quarry, which requires the Employer to deliver four to six loads of sand per day. Reynolds estimated that each load costs around \$500, and he personally makes deliveries twice a week from the Facility in Bear, Delaware to County Line Quarry in Pennsylvania. Reynolds has witnessed all of the Employer's trucks traveling to County Line Quarry to deliver loads. He stated that Drivers also regularly pick up materials from Maryland Materials, located in Elkton, Maryland and bring them to the Facility. Reynolds further testified that Nick Ferrara III signs his paychecks and that Nick Ferrara III and Nick Ferrara Jr. both visit jobsites and oversee the employees.⁵ He believes that one of the two Ferraras was the Employer's principal officer, but he is not certain which one. The trucks employees drive are labeled with the name "Contractors Hauling LLC," and employee paystubs bear the same name. The Drivers' paychecks come from the Employer's New Castle office.

³ These topics included: the legal name of the business; the Employer's state of incorporation; the amount of the Employer's interstate purchases and sales; the number of drivers; employee shifts; and the payroll ending date.

⁴ By email of December 16, the Hearing Officer asked Ferrara III whether certain alleged facts concerning the Employer's jurisdiction were accurate. Ferrara III asserted by email of December 19 that the facts were not accurate, but did not specify what was incorrect and provided no additional information.

⁵ The record indicates that Ferrara Jr. and Ferrara III also are principals in various other trucking companies.

The record contains a printout of a listing from the State of Delaware Division of Corporations, which shows that the Employer is a Delaware Limited Liability Company formed on August 20, 1999. The document lists the New Castle, Delaware address set forth above.

Analysis

The Board's statutory jurisdiction extends to all enterprises whose operations affect interstate commerce, as defined in Sections 2(6) and 2(7) of the Act. As construed by the Supreme Court, the Board's jurisdiction applies to all conduct that might be regulated under the commerce clause, subject only to the rule of de minimis. *NLRB v. Fainblatt*, 306 U.S. 601, 607 (1939). However, in the exercise of administrative discretion, the Board has limited its broad statutory jurisdiction to cases which have a substantial effect on commerce.⁶ See *NLRB v. Denver Building and Construction Trades Council*, 341 U.S. 675, 684-685 (1951).

In *Tropicana Products*, 122 NLRB 121, 123 (1958), the Board held that jurisdiction may be asserted in any case in which an employer has refused, upon reasonable request by Board agents, to provide information relevant to the Board's jurisdictional determinations, where the record developed at a hearing, duly noticed, scheduled, and held, demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's discretionary jurisdictional standards.

In this case, there is no question that the Employer was notified of the hearing, by formal Notice sent to its New Castle office and by the Hearing Officer's emails. Indeed, Ferrara III contacted the Hearing Officer about the hearing on several occasions, and the hearing was postponed from December 15 to December 20 at Ferrara III's request. The Employer's failure to appear at the hearing despite adequate notice, or to respond to the Hearing Officer's inquiries, constitutes a refusal to provide information sufficient to invoke the *Tropicana* rule.⁷

The record evidence demonstrates that the Employer is engaged in interstate commerce sufficient to satisfy the Board's statutory jurisdiction requirement. The Employer regularly employs 15 to 18 Drivers who transport four to six loads per day from Delaware to Pennsylvania, and each load is worth about \$500. Thus, the Employer delivers \$2,000 to \$3,000 worth of its products across state lines every day. The Employer's Drivers also regularly pick up materials from Maryland and transport them to Pennsylvania. Overall, the Employer's interstate transportation of goods and materials is far more than sufficient to establish statutory jurisdiction and also satisfies the Board's discretionary standard of \$50,000 annually for wholesale enterprises. I therefore find that the Employer is an employer engaged in commerce within the

⁶ With respect to wholesale sales, i.e., sales to other businesses or government entities, the Board's discretionary standard for exercise of its jurisdiction is an annual outflow or inflow of goods or services across state lines of at least \$50,000. *Siemons Mailing Service*, 122 NLRB 81 (1959).

⁷ See also *Continental Packaging Corp.*, 327 NLRB 400 (1998).

meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

III. LABOR ORGANIZATION STATUS

Section 2(5) of the Act defines a “labor organization” as “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” See *Polaroid Corp.*, 329 NLRB 424 (1999); *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851-852 (1962).

The Petitioner is a local union with about 1,500 members that has negotiated collective-bargaining agreements with various employers and processes grievances on behalf of employees it represents. It currently has contracts with at least 30 employers. The record includes one of these contracts, which indicates that stewards and alternate stewards at each jobsite will be selected by the Petitioner from among the employer’s employees. I therefore find that the Petitioner exists for the purpose of dealing with employers concerning employees’ terms and conditions of employment and that its members participate in its activities. Moreover, the Board has previously repeatedly found the Petitioner to be a labor organization. See, e.g., *M & G Convoy*, 287 NLRB 1140 (1988); *TLI, Inc.*, 271 NLRB 798 (1984), *enfd.*, 772 F.2d 894 (3d Cir. 1985); *Teamsters Local 326 (Greggo & Ferrara)*, 269 NLRB 729 (1984). Accordingly, I find that *the* Petitioner is a labor organization within the meaning of Section 2(5) of the Act. *Alto Plastics Mfg. Corp.*, above.

IV. APPROPRIATENESS OF THE UNIT

Facts

The Petitioner seeks to represent a unit limited to the Employer’s full-time and regular part-time Drivers. The Employer employs 15 to 18 Drivers and three Mechanics at the Facility. The Drivers report to the Facility each morning at 7:00 a.m. and work for at least eight hours, completing three to eight delivery runs per day. They return the trucks to the Facility at the end of their shifts. The Mechanics do not drive trucks.

A Dispatcher, Terry Allen, gives the Drivers their delivery assignments using a written dispatch sheet at the start of the day and thereafter communicates with them by cell phone. Allen tells the Drivers what materials to load in their dump trucks and where to deliver these materials.

Analysis

In determining an appropriate unit under Section 9(b) of the Act, the Board first examines the petitioned-for unit. If that unit is appropriate, the inquiry ends. *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), slip op. at 8; *Wheeling Island Gaming, Inc.*, 355 NLRB No. 127, slip op. at 1, fn. 2 (2010); *Dezcon, Inc.*, 295 NLRB 109, 111

(1989). When a party contends that a unit should be expanded beyond an otherwise appropriate petitioned-for unit, the burden is on that party to show that there is “an overwhelming community of interest between the included and excluded employees.” *Specialty Healthcare*, above, slip op. at 11. To meet this burden, it is not enough to show that the larger grouping is “an appropriate unit or even a more appropriate unit.” *Id.*, slip op. at 14.

In determining whether a group of employees possesses a community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, interchange of employees, contact among employees, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990). The Board has found units limited to drivers appropriate where they lack substantial interchange with other employees, perform significantly different functions, and possess different skills. *Home Depot USA, Inc.*, above; *Rinker Materials Corp.*, 294 NLRB 738, 739 (1989).

The record does not show a strong community of interest between the Drivers and Mechanics. All Drivers perform their work predominantly away from the Facility and have little opportunity for contact with other employees. There is no evidence of interchange between the Drivers and Mechanics, and they possess different skills and perform different responsibilities.

The Drivers receive their assignments from the Dispatcher and have daily contact with him or her. However, the two positions require different skills, and the Drivers spend little time at the Facility. The record does not show that there is any interchange between the Drivers and the Dispatcher or that they share common supervision. Thus, there is no basis to include the Dispatcher in the unit. See *Specialty Healthcare*, above.

Accordingly, I find that the Drivers are a readily identifiable group that shares a community of interest and that the petitioned-for unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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

All full time and regular part-time Drivers employed by the Employer at its facility at 820 Federal School Lane, Bear, Delaware, **excluding** Mechanics, Dispatcher, guards, and supervisors as defined in the Act.

VI. 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 the purposes of collective bargaining by **General Teamsters Local Union 326**. 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. Eligible Voters

The eligible voters shall be unit employees 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 were 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, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees who are 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 after the designated payroll period for eligibility; (2) employees engaged in a strike 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 engaged in an economic strike which began more than 12 months before the election date 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.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **Friday, January 20, 2012**. No extension of time to file this list shall 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 by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at **www.nlr.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of 2 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 a minimum of 3 working days prior to 12:01 a.m. 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 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. **RIGHT TO REQUEST REVIEW**

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Friday, January 27, 2012, at 5:00 p.m. (ET)**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of

the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁸ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

DATED: January 13, 2012



DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four
National Labor Relations Board
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

⁸ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.