

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Thirty-First Region

TGF MANAGEMENT GROUP HOLDCO, INC.,
d/b/a TOLL¹

Employer

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

Petitioner

Case 31-RC-072975

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of all full-time and regular part-time port drayage drivers² (also referred to as tractor trailer drivers and drivers in the record, and hereinafter called drivers) employed by the Employer at its San Pedro, California facility. The Employer asserts that the Petitioner's proposed unit is not appropriate because the only appropriate unit must also include all full-time and regular part-time employees in its trucking operations, as well as its logistics personnel working out of its San Pedro, California facility. According to the Employer, employee classifications in these areas include, in addition to drivers, dispatchers, forklift operators, leads, the safety coordinator, switchers, truck and facility maintenance workers (mechanics), trucking customer service representatives (CSRs), and warehouse laborers employed by the

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

² Both parties agree that the drivers classification includes employees who only drive locally. Excluded from the unit are employees who drive to destinations outside of the local area, referred to as express or long-haul drivers in the record.

Employer. In addition to opposing the Employer's contention with regard to the unit, Petitioner also contends that dispatchers and the dispatch lead are supervisors within the meaning of Section 2(11) of the Act, and therefore should be excluded from any unit found appropriate.

Based on the record and relevant Board cases, including the Board's decision in *Specialty Healthcare and Rehab. Ctr. of Mobile*, 357 NLRB No. 83 (2011), I find the petitioned-for unit limited to the Employer's full-time and regular part-time drivers to be appropriate.³ My conclusion that the petitioned-for unit is appropriate is based on the following:

I first provide an overview of the Employer's operations and supervisory hierarchy. Second, I describe in detail each classification in dispute. Next, I review applicable Board precedent. Finally, I discuss how Board law applies to the facts of this case.

A. The Employer's Operation and Supervisory Hierarchy

The Employer warehouses and transports goods imported into the country via airfreight, domestic freight, rail freight, or ocean freight to its customers. Included in the Employer's operations are a facility located at 400-500 Westmont Drive, San Pedro, California, and "yards" located in Wilmington and Carson, both in California and both considered part of the San Pedro operation. The Westmont Drive facility includes a warehouse, a maintenance department shop, an area for the safety department, and office space. Dispatch, warehouse office staff, CSRs, and some managers are located

³ Since I conclude that the dispatchers do not share an overwhelming community of interest with the drivers, I will not make a finding as to their supervisory status under Section 2(11) of the Act.

in the office space. The leased yards at Carson and Wilmington are within eight miles of the San Pedro location.

Vice President of West Coast Operations (VP) Rich Nazzaro oversees the Employer's operation. The 73 unit drivers, five dispatchers,⁴ and one CSR (in charge of equipment control) are supervised by Dispatch Manager Cesar Navares.⁵ The other 10 CSRs are supervised by a manager other than Navares. All other classifications in dispute have yet different supervision, which is described further below.

B. Job Descriptions and Requirements

1. Drivers

Each driver in the unit sought by Petitioner is assigned a truck and drives alone. Drivers pick up their trucks at the Wilmington yard and are on the road most of the day. They perform a pre- and post-trip inspection of their vehicles at the start and end of their shifts. According to the testimony of one driver, each inspection requires about 20 minutes. Drivers must submit reports in a box at the Wilmington yard after conducting their inspections. If a driver discovers a repair issue, the driver notifies dispatch and a dispatcher will either direct the driver to go to the Westmont Drive location's maintenance shop for repairs, or assign the driver another truck. If a driver is instructed to go to the maintenance shop, the driver submits the inspection report to the mechanic. Depending on whether or not the problem is minor, the driver may either wait for the truck to be repaired or may be assigned another truck by dispatch or a mechanic.

⁴ The five dispatchers include one dispatch lead, three dispatchers, and one dispatch clerk.

⁵ Petitioner disputes whether the dispatch manager supervises the 73 drivers, and instead maintains that the drivers are supervised by the five dispatchers, who in turn are supervised by Navares.

Once a driver has submitted the inspection report and is in a properly functioning truck, the driver contacts dispatch to receive a first assignment. The driver uses an Employer-provided Nextel phone to contact dispatch. Drivers are assigned to pick up containers or loads at various locations,⁶ to deliver the loads to the customers, or to pick up or drop off empty containers or loads. After completing their first assignments, drivers call dispatch for subsequent assignments until their shifts are complete. One driver testified that it takes him no longer than 15 minutes to drop off or pick up containers at the Employer's Westmont Drive location and then leave to go to another location.

Whenever drivers encounter problems or issues while driving, they contact the dispatchers or go to the dispatch window at the Westmont Drive location for assistance. Even when drivers physically appear at the Westmont Drive location, they do not go into the office space; they always go to the dispatch window. One driver testified that he is at the dispatch window almost every day. However, the other driver who testified stated that he goes to the dispatch window two to three times per week.

Drivers do not load or unload containers, are not assigned to work at the warehouse, and do not work in other parts of the Employer's Westmont Drive location. Thus, they never work as forklift operators or warehouse laborers. Both drivers who testified, as well as the lead dispatcher testifying on behalf of the Employer, stated that drivers do not have work-related contact with forklift operators, CSRs, or warehouse leads. Both drivers also testified that they have little or no contact with the safety coordinator.

⁶ These locations include the Employer's Wilmington, Carson, and Westmont Drive locations, as well as the port, airfreight terminals, and rail terminals.

Drivers are scheduled five days per week, and their shifts are usually 8-12 hours. Shifts begin at 5:00 p.m., 8:00 p.m., 10:00 p.m., and 5:00 a.m., and perhaps at other times (the record is unclear on this point). Multiple drivers work each shift, although the record does not reveal the precise numbers on each shift. Drivers are paid \$12.72 - \$13.24 per hour, plus incentive pay, which is a set amount for certain designated routes. The drivers in the unit sought by Petitioner are the only employees who receive incentive pay.

Drivers in the unit sought by Petitioner are subject to a number of requirements both to obtain and retain their jobs. Some of these requirements are imposed by government regulations. For example, to be hired, drivers need to have a Class A Commercial Drivers License (CDL), and three years' prior driving experience, at least some of which should be working out of the port. To obtain a CDL, a driver must pass a written test and a road test. The CDL may be revoked if the driver accumulates points for driving infractions, and must be renewed every five years.

The California Department of Motor Vehicles (DMV) requires drivers to pass a medical exam in order to obtain their CDLs. Drivers are subject to random Employer drug tests after being hired, pursuant to Department of Transportation (DOT) regulations. Drivers are also required to have two years of harbor experience and to have a Transportation Workers Identification Card (TWIC) in order to have access to the port. In order to receive a TWIC card, a driver has to pass a Federal Bureau of Investigation (FBI) background check. In addition, the ports have their own rules, which drivers are notified about through the Employer. Failure to follow these rules may result in drivers being refused access to the port. This could result in a driver receiving progressive discipline and possibly being terminated by the Employer.

In accordance with DOT regulations, drivers are required to keep a logbook. Among other things, drivers must record when they work more than 12 hours in a shift. These logbooks are submitted to the Employer's safety department. In addition to the Employee Handbook (which is the same for all employees), drivers are given a separate safety manual called the Driver Orientation and Safety Manual. This manual reviews the Employer's rules and practices, how to conduct equipment inspections, how to report accidents, and some DOT regulations. The pre-inspection reports described earlier are mandated by the DOT and California Bi-annual Terminal Inspection (BIT). Drivers must keep copies of these reports with them while driving because, if they are pulled over, a police officer may ask to see them.

Drivers are also part of the Comprehensive Safety Analysis (CSA) program conducted by the DOT. Under this program, which started in 2010, drivers are responsible for inadequate pre-inspections of their trucks. The record is silent regarding the extent of the driver's responsibility. The Employer also gives drivers a handbook entitled "CSA: The 7 Basics." Drivers take at least seven tests during orientation and also after accidents for retraining, and must sign at least three acknowledgment forms. Two of the acknowledgments and six of the tests are required by DOT regulations. These tests are administered by the Employer's safety department.

2. Dispatchers

All of the dispatchers have a Nextel phone and a computer. Dispatchers use the phones to communicate with drivers and tell them where to make pickups, what containers to pick up, and where to deliver freight. Dispatchers never go to the port and never drive trucks. When a driver is told by the dispatcher which loads have to be delivered and picked up, the driver may also be told the priority of the assignments.

The priority of deliveries and pickups is determined by the senior director of transload and trucking, the dispatch manager and the dispatch lead, and is modified throughout the day. The list does not assign specific loads to drivers, but lists the priority of the various loads. At the end of a shift, dispatchers modify and update the list and then send it to the next dispatch shift, the warehouse managers or supervisors, and the CSRs. Obviously, dispatchers have contact with drivers throughout their shift at the dispatch window or over the phone. The lead dispatcher estimated that during a recent shift, he had contact with about 75 percent of the 35 to 40 drivers working during his shift.

Dispatchers also direct warehouse employees what to pick up for loading, when and where to be, and what the priority loads are. If a warehouse employee notifies a dispatcher that a serial number on a container is incorrect, the dispatcher notifies the CSRs. If a CSR notifies a dispatcher of a discrepancy on the driver tally manifest, the dispatcher notifies the driver and the driver determines whether there is any damage or shortage.

There are usually two dispatchers on duty at a time. They work in overlapping shifts of eight to ten hours. The one dispatch clerk assists the dispatchers and also can dispatch drivers. All dispatchers but the dispatch clerk are salaried. Dispatchers work 40 hours per week and occasionally work additional hours, but never receive overtime. The dispatchers' salaries equal an hourly range of \$13.54 - \$16.36 per hour. In order to be hired, dispatchers must have at least two years of experience in port drayage or truck dispatching. Obviously, dispatchers do not need a CDL, a TWIC card, or to otherwise meet requirements imposed by government regulation in order to be hired.

3. *Mechanics*⁷

Two mechanics repair and maintain the trucks, forklifts, cherry pickers, turret picker, and conveyor system located in the warehouse. If a driver discovers a problem with a truck while completing an inspection, the driver is required to report it to the maintenance department. A mechanic will then ask the driver questions about the issue or problem in order to determine what is in need of repair. Drivers do not assist mechanics with repairs; they stay outside the mechanics' work area at all times. One driver testified that he does not always talk with the mechanics when he has problems with trucks; sometimes he just fills out the report explaining the issue and submits it or leaves a note for the mechanic on the windshield explaining the problem.

If the repair will take longer than 20 minutes, the driver is instructed to take a truck off the ready line. The ready line is an area where repaired trucks that have been put back in service are available for use in the event that a driver cannot drive his normal vehicle. If the repair will take less than 20 minutes, the driver is instructed to wait. When drivers have problems on the road, they contact dispatch, and dispatch in turn notifies the mechanics, who then call the drivers. Thus, the mechanics have regular contact with the drivers.

The two mechanics report to the maintenance department manager. Only the maintenance department manager has a CDL. Mechanics do not drive the trucks in order to make deliveries, but do drive them in the yard to test them as part of the repair process. Mechanics are paid \$10.50 - \$25.75 per hour, but the record is silent as to their shifts and hours.

⁷ I note that a joint stipulation by the parties to correct the record, which was entered into after the close of the hearing, states that the mechanics are in fact classified as "forklift drivers/maintenance."

4. Switchers

There are currently no switchers employed by the Employer. Rather, the switcher work is subcontracted, and the Employer has no plans to hire switchers. Thus, any record evidence regarding this classification is irrelevant, and I make no factual findings regarding it.

5. Forklift Operators

Forklift operators, also referred to as “equipment operators” and “fork-lift drivers” in the record, work in the warehouses located at the Westmont Drive and Carson locations. These employees operate not only forklifts, but also cherry pickers and/or turret pickers. They use this equipment to remove or load items into containers or trailers or to remove or load freight onto warehouse racks where the freight is stored. They also count cartons and pieces and verify the container serial number. A computer on the equipment is used by forklift operators to input information about the cartons or containers they are counting, loading or unloading. This includes inputting information about the location of items in the warehouse into Toll’s Fox System, which the Employer uses to track the containers. Sometimes, if there is a large volume of work, forklift operators also engage in the duties of the warehouse laborers, such as loading and unloading containers. However, they never drive the trucks driven by drivers in the unit sought by Petitioner, and they never go to the port for the Employer. Forklift operators earn \$9.06 - \$14.06 per hour.

Forklift operators must be certified to operate each piece of equipment they use. To be certified, they must take a class instructing them how to use the specific type of equipment and then participate in a practical skills test. These certifications must be renewed every three years. Like drivers, forklift operators are subject to random drug

tests after being hired, pursuant to DOT regulations. Also like drivers, at the start of every shift, forklift operators must complete a pre-inspection of their equipment. If they discover a problem with the equipment, they must report it to the maintenance department immediately. Forklift operators also sign an acknowledgment that they received the Rules of Conduct and Progressive Discipline, and Safety Rules -- Equipment Operators. These rules of conduct are unique to the forklift operators. The record contains three other tests which forklift operators would also be required to pass depending on the equipment they are certified to operate. They are not required to have a certain number of years of experience prior to hire.

6. Warehouse Employees

Warehouse employees consist of two classifications—laborers and warehouse leads. The distinction between them is that the warehouse leads assist the managers and supervisors to ensure that the loads flow from the warehouse to the customer. Leads have more responsibility than warehouse laborers, and have access to a computer to check company email. They receive instructions from their manager or supervisor and check the priority-list emails. This daily email lists what loads need to be delivered that day, what containers are coming into the warehouse that day, and what loads are priority. The leads then direct the warehouse laborers what to load and unload from the trailers or containers and how to split the goods in the containers into the trailers. The leads also verify piece counts.

Warehouse leads complete paperwork such as making notations on the priority list of issues that arise, and submit them to the CSRs. Warehouse leads put together what is referred to in the record as “packets,” which contain numerous documents, including the load manifest, various tally sheets, and freight breakdown sheets. The

leads communicate with dispatch and CSRs regarding what is being done each day and when there are discrepancies with a piece count for a container. Some warehouse leads communicate with each other and the managers using walkie-talkies, while others have Nextel cell phones. Warehouse leads are paid \$11.00 - \$19.32 per hour.

Warehouse leads are not required to have a CDL or TWIC card, and never drive trucks or go to the port. Often warehouse leads began as workers who took on more responsibility as they became more senior.

Warehouse laborers sort and organize the containers in the warehouses, unload and load the containers and trailers, pack and unpack cartons, clean the warehouse, and verify the piece count for unpacked containers. They receive tallies from the CSRs for containers that have arrived, which notify them which containers will be coming to the warehouse for unloading that day. They use these tallies to verify the number of pieces they unpack from the containers and cartons. They generate a Summary Report that is used to notify customers of the condition of freight when it arrives from the air, ocean, rail, or other carriers. This report specifies if anything was damaged, or if there was a shortage or overage. They notify dispatch of empty containers ready to be returned to port by entering the information into the Toll BoxPro System. Warehouse laborers also inform dispatch when a load is ready for delivery, and inform CSRs when there is a discrepancy in the piece count or with a container's serial number.

Some warehouse laborers are given walkie-talkies to communicate, but the record is silent as to why some receive them and others do not and with whom they are used to communicate. They are paid \$8.50 - \$11.80 per hour. Laborers typically start as temporary workers and, if they show that they can come to work on time and learn the procedures, they may be hired as permanent employees.

7. *Safety Coordinator*⁸

The Employer employs one safety coordinator, who testified about her duties. The safety coordinator assists in maintaining DOT compliance for the drivers, Occupation Safety and Health Administration (OSHA) compliance for employees who work in the warehouse, and OSHA requirements for forklift operators. She is responsible for making sure that the drivers maintain their CDLs, which are renewed every five years. She also checks drivers' punch-in and punch-out times to ensure that if they worked more than 12 hours, they submitted a Driver Log Book in accordance with DOT regulations. For all of the employees, she maintains the Illness and Injury Prevention Plan (IIPP). The safety coordinator also trains forklift operators in order for them to be certified. The position also has clerical duties, including preparing new-hire packets, and playing training videos for new hires and employees completing safety retraining and at monthly meetings at the Westmont Drive location.⁹

The safety coordinator is paid in the wage range of \$12.00 - \$20.00 per hour. To hold the position, the safety coordinator must be certified to drive a forklift. However, the position does not require possessing a CDL or an ability to drive trucks. Other requirements for becoming a safety coordinator are good communication skills, computer proficiency, and possibly knowledge of DOT regulations.

⁸ I note that on February 28, 2012, the parties submitted a joint stipulation to correct the record with respect to substituting a revised version of Employer's Exhibit 4 and correcting the testimony of the safety coordinator where it was reported as inaudible. I accept the joint stipulation and have considered the evidence presented therein in making my decision.

⁹ According to the safety coordinator, drivers attend meetings at the Wilmington location, and all other classifications attend meetings at the Westmont Drive location. Each classification attends its own meeting, except the CSRs and dispatchers, who attend these meetings with the management group.

8. CSRs

At the hearing, the Employer asserted that the CSR classification included one CSR who is in charge of equipment control (CSR/EC) and 10 other CSRs. Their job duties and requirements will be discussed separately.

The sole CSR/EC testified that her position was created just months before the hearing, and that prior to the position being created, she worked as a CSR. She testified that she works in the office at the Westmont Drive location between the CSRs and the dispatch window. Her responsibilities are to check on the status and priority of empty containers for every customer account and compile a list of empties that must be returned to the port at specific times before the Employer is charged a per-day fee. She gives this list to the dispatch manager and dispatchers. She then spends the rest of her day following up on whether the empty containers have been picked up by the drivers by speaking with the customers, calling the air terminal, searching through the internet, and occasionally asking the dispatcher.

The CSR/EC testified that she does not communicate with the drivers, warehouse leads, warehouse laborers, or forklift operators. She stated that she does interact with the CSRs and dispatch by phone, email, and in person. She also uses the Toll Fox Computer System, which notifies her whether a container is available or not, and when the containers need to be returned. The pay for this position is included within the CSR range of \$10.93 - \$18.04 per hour. The record is silent as to any hiring requirements for the position, or how those requirements differ from the CSRs. According to the CSR/EC, she reports to a different manager than the other CSRs.

The remaining CSRs work in the same area inside the office at the Westmont Drive location. The CSRs' duties are to receive work orders from customers,

communicate with customers regarding the status and location of their containers and cartons, and determine the number of pallets needed for a driver to pick up air freight. CSRs communicate with customers over the phone, and by email and fax. They create various documents, files and paperwork that are distributed to dispatch, the warehouse, customers, and managers. CSRs create work orders and files for each container and for each move that the Employer makes for a container or load. These work orders are created in the Toll Fox System. CSRs, as well as warehouse leads, warehouse laborers, and dispatchers, have access to the computer systems. CSRs also make appointments with the terminals and track the locations of containers for the customer. Once the container arrives at the port, terminal, rail, etc., they create a folder that goes to the dispatchers telling them the priority, and a tally that goes to the warehouse. When the container or load is ready for delivery to the customer, the CSR either creates or forwards the Manifest Load Plan, which states what needs to go into the load.

CSRs rarely communicate directly with drivers. According to one Employer witness, a CSR will have to communicate directly with a driver regarding a discrepancy about twice a month, and these communications occur through the dispatch window. When CSRs do not know where a load or driver is located or discover that a driver did not deliver a load, they call dispatch for assistance.

CSRs earn \$10.93 - \$18.04 per hour. They do not drive trucks and do not go to the port. The Employer's hiring requirements for CSRs include experience with trucking companies or freight forwarding, and also with the office systems used by the Employer. They also must have good oral and written communication skills for dealing with customers.

9. *Interaction Among Job Classifications in the Employer's Proposed Unit*

The Employer offered lengthy testimony regarding the interaction among the classifications and how the work of one classification impacts the work of the others, as well as testimony regarding the Toll computer systems' role in the interaction among several of the classifications. The majority of interactions are via email or use of other computer programs. Drivers, however, have some additional limited interactions with dispatchers and mechanics, as already described. However, in spite of the specific interactions described above, employees in the various classifications never perform the tasks of any of the other classifications, except that sometimes the forklift operators also engage in the duties of the warehouse laborers; such as loading and unloading containers if there is a large volume of work or during certain times of the day. Thus, the majority of the witnesses' testimony regarding the interactions between classifications was concerning the computer systems or email.

C. Board Law

The Act does not require a petitioner to seek representation of employees in the *most* appropriate unit possible, but only in *an* appropriate unit. *Overnite Transp. Co.*, 322 NLRB 723 (1996). The Board first determines whether the unit proposed by a petitioner is appropriate. When the Board determines that the unit sought by a petitioner is readily identifiable, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the unit employees could be placed in a larger unit that would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an "overwhelming community of interest" with those in the petitioned-for unit. *Specialty Healthcare*, *supra*, slip op. at 7.

Thus, the first inquiry is whether employees in the job classification sought by Petitioner share a community of interest. In determining whether employees in a proposed unit share a community of interest, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002); see also *Specialty Healthcare*, supra, at 9. Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, 256 NLRB 1069, fn. 5 (1981). However, *all* relevant factors must be weighed in determining community of interest.

With regard to the second inquiry, additional employees share an overwhelming community of interest with the petitioned-for employees only when there "is no legitimate basis upon which to exclude (the) employees from" the larger unit because the traditional community-of-interest factors "overlap almost completely." *Specialty Healthcare*, supra, slip op. at 11-13, and fn. 28 (quoting *Blue Man Vegas, LLC. v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008)). Moreover, the burden of demonstrating the existence of an "overwhelming community of interest" is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3, fn. 8 (2011).

D. Application of Board Law to the Facts of This Case

1. Drivers in the Unit Sought by Petitioner Are a “Readily Identifiable Group”

In concluding that the employees in the petitioned-for unit are “readily identifiable as a group,” I note that they are all under common supervision that is separate and unique to them, except for the dispatchers and the CSR/EC. In addition, the drivers share a unique function—delivering containers to various ports and to the Employer’s warehouse facilities. They also have distinct terms and conditions of employment. These distinct terms include being away from all of the Employer’s facilities most of their workday and the opportunity to earn incentive pay, which no other employees are able to earn. They also have unique workplace rules and policies.

Significantly, drivers are required to have distinct skills, training, and experience. They are subject to a myriad of DOT regulations. Unlike other employees, they are required to have a Class A CDL issued by the DMV prior to being hired. In order to receive a CDL, drivers must pass a written test, road test, medical exam, and receive a medical card. They must maintain clean driving records. Drivers are also required to have at least two years of driving experience in the harbor; receive a TWIC card, which requires an FBI background check; undergo random drug testing; and keep a Drivers Logbook of any time worked over 12 hours. These unique qualifications and requirements differentiate drivers from employees in other classifications.

Accordingly, I conclude that the employees in the petitioned-for unit share a distinct community of interest with one another and that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining.

2. The Employer Has Failed to Demonstrate That the Employees It Seeks to Add to the Unit Share an Overwhelming Community of Interest with the Drivers

I conclude that the full-time and regular part-time dispatchers, forklift operators, warehouse leads and laborers, safety coordinator, mechanics, and CSRs do not share an overwhelming community of interest with the drivers, whether the classifications that the Employer seeks to add are considered as a group or individually. In reaching this conclusion, I find that the additional classifications (with some exceptions related to the dispatchers and mechanics) work separately from drivers and have some unique terms and conditions of employment; perform distinct tasks with distinct skills and qualifications; are separately supervised; and have infrequent contact with the drivers. Moreover, there is no interchange with drivers. In this regard, not one of the classifications that the Employer seeks to add performs the work of the drivers, has the qualifications to perform the work of the drivers, or has the necessary skills to become a driver. There is not even evidence of permanent transfers between the drivers and any of the classifications the Employer seeks to add.

Because the dispatchers are commonly supervised and, along with mechanics, have the most work-related interaction with drivers, I consider these issues separately.

With regard to the dispatchers, despite their common supervisor, dispatchers do not share any of the driver job duties; do not have similar qualifications; and have separate and distinct terms and conditions of employment. Dispatchers assign work to the drivers; ensure that the proper containers, loads, and empties are picked up and dropped off within the required times; and spend the entirety of their shift in the office. Dispatchers are only required to have at least two years of experience in port truck dispatching. They are salaried employees, while drivers are hourly paid, with additional

incentive pay as part of their compensation. In addition, there is no job interchange between the two classifications. The record does show continuous, consistent, and daily contact between drivers and dispatchers. However, this is insufficient to show that the two classifications have an overwhelming community of interest, particularly because most of this contact is by telephone—and not in person.

Even though drivers and dispatchers have been found by the Board to comprise an appropriate unit in other cases, “there is no inconsistency between these unit findings because Section 9(b) and settled Board and court precedent permit the Board to find different units to be appropriate.” *Overnite Transp. Co.*, 322 NLRB at 724. Further, “in the same factual setting the Board may find different units appropriate,” but the petitioned-for unit need only be *one* of those appropriate units. In this case, a unit of drivers that includes dispatchers may be *an* appropriate unit. However, the Employer has not provided sufficient evidence that dispatchers share an overwhelming community of interest with drivers such that the community-of-interest factors “overlap almost completely” and there is no legitimate basis for excluding them. *Specialty Healthcare*, supra, slip op. at 11-13, and fn. 28 (quoting *Blue Man Vegas, LLC. v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008)). See also *Home Depot USA*, 331 NLRB 1289 (2000).

With regard to the mechanics, drivers and mechanics are separately supervised and do not have similar skills or training. Mechanics are not required to have the multiple qualifications expected of drivers, and they are not highly regulated by the DOT. In addition, mechanics do not receive incentive pay, they only work at the Westmont Drive location, and they are not required to have a CDL or TWIC card. There is no interchange between drivers and mechanics. It appears that mechanics do have some work-related contact with drivers. Drivers submit inspection reports that are

reviewed by mechanics, and when there are repair issues, mechanics and drivers may interact to identify and resolve the issues. However, that interaction is sporadic and intermittent—there is no evidence that drivers and mechanics have work-related contact on a day-to-day basis. Thus, the work-related contact is insufficient in and of itself to demonstrate that they have an overwhelming community of interest such that there is no legitimate basis to exclude them from the unit because the community-of-interest factors “overlap almost completely.” *Id.*

I acknowledge that the employees the Employer contends must be included in the unit share the same benefits and break room as the drivers, and interact with one another in certain limited circumstances. In addition, they all receive the same employee handbook, human resources orientation, and pre-employment drug test and background check. I also note that the Employer’s operations are functionally integrated, in that all employees are working toward the same goal of serving customers by picking up and delivering goods. However, each classification has a separate role in the process, and there is little if any job overlap. While the Employer’s contentions may establish that the broader unit sought by the Employer is *an* appropriate unit, they are insufficient to establish that the classifications the Employer seeks to add share such an overwhelming community of interest with drivers as to *require* their inclusion in the unit.

E. Conclusion

In sum, the factors I rely on to conclude that the drivers are a separate appropriate unit are: separate supervision; lack of interchange; low level of work-related contact and interaction; no overlapping job functions; and separate terms and conditions of employment, including different work location, pay arrangement, required

certifications, training, experience, skills and ongoing requirements vis-à-vis compliance with DOT and DMV regulations.

Based upon the entire record in this matter and in accordance with the discussion 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 herein.
3. The labor organization involved 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 Port Drayage Drivers; excluding express or long-haul drivers, all other employees, office clerical employees, managers, and 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**. 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 Co.*, 394 U.S. 759 (1969).

Accordingly, it is directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Director for Region 31 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 the Regional Director for Region 31 to assist in determining an adequate showing of interest. The Regional Director shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Region 31 Office, 11150 W. Olympic Blvd., Suite 700, Los Angeles, CA 90064-1825, on or before close of business **March 19, 2012**. No extension of time to file this list will be granted by the Regional Director 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 Region 31 Office by electronic filing through the Agency's website, www.nlr.gov,¹⁰ by mail, or by facsimile transmission at (310) 235-7420. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

¹⁰ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, 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 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 in Region 31.

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 Board in Washington by **March 26, 2012**. *The request may be filed electronically through the Agency's website, www.nlr.gov,¹¹ but may not be filed by facsimile.*

¹¹ To file the request for review electronically, go to www.nlr.gov, and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in

Signed at Minneapolis, Minnesota, this 12th day of March, 2012.

/s/ Marlin O. Osthus

Marlin O. Osthus, Acting Regional Director¹²
National Labor Relations Board
Region 31
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

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.nlr.gov.

¹² This case was transferred to me for purposes of issuing a decision only. All further processing of this case, including scheduling and conducting an election, will be performed by Region 31.