UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SCULLY DISTRIBUTION SERVICES, INC.
Employer

and Case 32-RC-5694

TEAMSTERS LOCAL 439, INTERNATIONAL BROTHERHOOD OF TEAMSTERS
Petitioner

ORDER

Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.[1] Contrary to the Employer, the evidence of employee interchange present in this case is distinguishable from that found in We Care Transportation, 353 NLRB No. 9 (2008). In We Care, the Board found that 469 instances of employee interchange over a period of 84 days were significant in rebutting the single-facility presumption. Here, the Employer claims that the Fresno drivers may engage in over 1000 instances of interchange over a one-year period.[2] Besides the fact that the time period over which the instances of transfers take place is vastly dissimilar, on any given day in We Care, 80% of the drivers in the petitioned-for unit were on the dispatch sheet for another terminal. Therefore, 80% of those drivers ran the same routes and serviced the same customers as those drivers working out of another truck terminal. In contrast, the Employer here does not specify the percentage of drivers involved in the interchange. See New Britain Transportation Co., 330 NLRB 397, 398 (1999) (noting that the "presumption has not been rebutted where an employer's interchange data is represented in aggregate form rather than as a percentage of total employees").

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[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, ___F.3d___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009); *Narricot Industries, L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

[2] The Employer does not set forth the time period over which the transfers have taken place.

Because the Employer has failed to present evidence of employee interchange with the specificity required under Board law, we find that it has failed to rebut the single-facility presumption.[3]

WILMA B. LIEBMAN, CHAIRMAN

PETER C. SCHAUMBER, MEMBER

Dated, Washington, D.C., January 22, 2010.

[3] We deny the Employer's request to stay the election as moot.