

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

CANTEEN VENDING

Employer

and

Case 18-RC-080879

ALLIED SALES DRIVERS, AMBULANCE, BEER,
BREWERY, GRAIN ELEVATOR, RETAIL
LIQUOR, LIVERY, MALT HOUSE, SPRING
WATER, SOFT DRINK, TAXI CAB, VENDING
DRIVERS, HELPERS, INSIDE EMPLOYEES AND
GENERAL WORKERS UNION, LOCAL 792,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS¹

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent a unit of all full-time and regular part-time² drivers employed by the Employer at its St. Paul, Minnesota facility, where the Employer is engaged in food vending and office coffee service. The Employer contends that the unit sought by Petitioner is not appropriate because it comprises drivers who do not share a community of interest. More specifically, the Employer contends that the food vending drivers (also referred to as vending drivers and vending machine drivers in the record, and hereinafter called vending drivers) must be in a separate unit from the office coffee service drivers (also referred to as office coffee drivers and coffee drivers in the

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

² The Petitioner orally amended the petition at the hearing.

record, and hereinafter called coffee drivers). Both parties agree that warehouse and maintenance employees should be excluded from the unit. Based on the record and relevant Board cases, I find that a unit comprised of the Employer's full-time and regular part-time drivers employed at its St. Paul, Minnesota facility, excluding other employees as agreed to by the parties, is a unit appropriate for collective bargaining.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. A hearing officer of the Board held a hearing in this matter, and the parties subsequently filed briefs with me. My conclusion that the petitioned-for unit is appropriate is based upon the following:

A. The Employer's Operations

The St. Paul, Minnesota Facility

The Employer is one branch of a nationwide company engaged in food vending and office coffee service. There are about 80 branches, but only about 15 of those branches, including the one involved in this case, also provide office coffee service. The facility includes an office area; a warehouse where the coffee supplies, coffee equipment, nonperishable and perishable food items are housed; a maintenance area for machine repairs; a drivers' room; and a loading dock. The facility also includes a large secured parking lot with assigned spaces for each delivery truck and an unsecured parking lot for employees and visitors.

The Employer's office coffee service has grown dramatically in recent years. District General Manager (DGM) Dave Boucher testified that from 2000 until 2011 office coffee service rose from about \$47,000 in revenue per year to \$3 million in revenue per year. During the same period, vending revenue rose from about \$6 million per year to \$16 million. DGM Boucher further testified that in 2000 the coffee was distributed by a

vending driver as part of his vending route, and that in 2004 the Employer trained a warehouse employee to become a coffee driver with his own separate coffee route. Today there are five office coffee service routes and five coffee drivers. Boucher further testified that the increase in office coffee service is due to the Employer's 2004 purchase of a local vending company and the 2006 acquisition of a large office coffee service account. After the 2006 acquisition, the Employer also added a Customer Service Manager (CSM) to supervise the office coffee accounts and coffee drivers, and the office coffee operation was provided with a separate internal accounting structure.

Supervisory Hierarchy

As of April 24, 2012, the Employer reorganized the supervisory hierarchy by separating the vending machine supervisory hierarchy from the office coffee service supervisory hierarchy. As a result, vending drivers and coffee drivers have separate lines of supervision all the way to Chief Executive Officer (CEO) Dennis Hogan. CEO Hogan oversees the Employer's St. Paul operations, and he supervises Division President-Vending (DPV) Porter Hinton and President-Office Coffee (POC) Mike Flannigan. The 25 vending drivers³ are supervised by Customer Service Manager (CSM) Chad Vinar, and the five coffee drivers are supervised by CSM Tim Murphy. Prior to April 24, 2012, both CSM Vinar and CSM Murphy reported to DGM Boucher. Only CSM Vinar, CSM Murphy, and DGM Boucher work out of the St. Paul facility; all other supervisory staff work outside of Minnesota.

³ The 25 vending drivers include 23 regular vending drivers, one relief driver, and one vending driver trainee.

Bargaining History

DGM Boucher testified that in 2000, when he began working for the Employer, Milk Drivers and Dairy Employees Union, Local 471 (hereinafter called Local 471) represented the Employer's vending drivers, one coffee driver, maintenance workers, and warehouse workers. In January 2006, the Employer's employees voted to decertify Local 471 and have not been represented by a union since then. The last contract between the Employer and Local 471 was effective from March 1, 2002, until the decertification in January 2006.

The Employer introduced evidence concerning the scope of the bargaining units of certain of its competitors. However, this limited, anecdotal evidence is insufficient to warrant any conclusions as to an industry practice concerning the scope of vending and coffee driver units. In any event, I would give such evidence little if any weight in determining whether the unit sought in this case is an appropriate unit.

B. Duties and Compensation

Vending Drivers

Each vending driver is assigned a route and services about 25 to 30 vending machines per day. The vending drivers are responsible for cleaning and stocking the machines, making sure the machines are operable, and checking the food in the machines for freshness and safety. The vending machines accept cash and credit cards directly from the individual selecting the food and beverage products. It is the responsibility of the vending driver to collect the cash from the machine, drop off any refunds at a designated area, secure the collected cash in the box truck's safe, and move on to the next delivery.

The Employer provides the vending drivers with handheld devices that are plugged into the vending machine. The devices download information about the products that have been purchased, the amount of cash that should be in the machine, and what products are needed to restock the machine. At the end of the shift, the vending driver returns to the drivers' room at the Employer's facility and downloads the information from the handheld device into the Employer's iVend computer system. Through this system the vending driver can order the food that he needs for his next shift, and the Employer can track vending machine sales, ensure the correct amount of money has been collected, and monitor the drivers. The iVend system records the quantity of each food product that is purchased or loaded into the machine and uses that information to estimate what the vending driver needs to restock for a particular machine. The vending drivers use this information to load their trucks with the nonperishable food products for the next day. At the start of their next shift they load their trucks with the perishable items by placing them in the cooler.

The vending drivers have a physically demanding job and must be able to lift about 30 pounds of food products. Vending drivers are not required to have a commercial drivers license (hereinafter CDL). Both DGM Boucher and CSM Vinar testified that, because vending drivers handle cash, they must be trustworthy and honest. CSM Vinar also testified that qualified vending drivers must have average to above average math skills.

The vending driver shifts start between 7:00 p.m. and 4:00 a.m., and the drivers work between 10 and 12 hours per day. The record is unclear regarding the days of work or hours worked per week. The shift schedule gives vending drivers access to the vending machines when the least number of customers are present. CSM Vinar

testified that this makes servicing the machines more effective and reduces the risk of theft of vending machine cash. As a result of the shift schedule, vending drivers have less frequent contact with customers than coffee service drivers. The vending drivers nonetheless do interact with customers and are required to use interpersonal skills when doing so. Vending drivers are responsible for discussing new products with customers, asking what they think of the Employer's services, and finding out if the customer has any problems with the Employer's services. CSM Vinar testified that less than 25 percent of a vending driver's shift is spent talking with customers.

Approximately 16 vending drivers that had been represented by Local 471 are still paid under the wage-scale plan in the old Local 471 contract. That contract provided for a base wage, plus commission. The base pay fluctuates depending on the vending driver's gross sales. The seven least senior vending drivers are compensated on a commission basis of 8 percent of gross sales. They also receive a minimum guarantee of income in addition to their commission. The pay range for all vending drivers varies from \$32,000 to \$60,000 per year. The vending relief driver earns a salary, while the trainee is provided with training pay.

Coffee Drivers

The Employer contracts with companies to provide them with coffee service for their employees. The company is invoiced for the cost of the coffee and coffee-related products. Office coffee is typically purchased by administrative assistants employed by the Employer's customers. Larger accounts may have multiple administrative assistants and smaller ones may have none. In the latter instance, the company is simply invoiced for product sales. The administrative assistants also determine which

coffee products are purchased and order the products. With isolated exceptions the Employer does not collect directly from its office coffee customers' employees.

Coffee drivers stock the pantries at the coffee stations. This includes putting coffee and coffee-related products in the pantries at the coffee stations; cleaning the brewers, airpots, and coffee pots; following up with the customers, including printing and dropping off invoices and interacting with the customers; and trying to sell the customers new or more expensive items ("upselling") available from the Employer. Coffee drivers are only required to lift about four pounds of product, have more coffee and coffee-related products to remember, and typically service about 45 to 55 stations per day. The coffee drivers do not go to all of the same stations every day. They handle cash about once per month and use the MEI computer system, instead of iVend, to download the sales and product information from their handheld devices. The record is silent as to how the use of the MEI system differs from iVend and what information the coffee drivers receive from MEI.

Coffee drivers typically start their shift between 6:00 a.m. and 8:00 a.m., Monday through Friday, and work about 10 hours per day. They start early in the day to increase the likelihood of contact with the administrative assistants. The coffee drivers drop off the bills, ask the administrative assistants if they want any new or different products, and inquire about their satisfaction with the service. In addition, the customers want to see the drivers. The Employer also employs sales employees who are primarily responsible for selling the Employer's services to customers. It is important that customers not run out of coffee because of the high level of competition among other office coffee service companies. DGM Boucher testified that coffee drivers do not take as much time servicing the equipment and stocking the pantry as vending

machine drivers take with vending machines, but the coffee drivers tend to spend more time interacting with the customers.

CSM Murphy testified that coffee drivers must also be trustworthy and honest because they walk throughout the contract company's premises. They also need to have an outgoing personality and interpersonal skills. CSM Murphy determines if individuals meet these qualifications by talking with them and by speaking with the other employees. Coffee drivers are compensated on a commission basis of 8 percent of gross sales and have a wage range of \$30,000 to \$60,000 per year.⁴

Additional Similarities and Differences Between Drivers

Vending drivers and coffee drivers are not cross-trained—they utilize different computer systems and sell different products. The two groups do not interchange or share trucks or substitute for each other. The two groups have the same health benefits plan, 401(k), vacation plan, and vacation compensation formula. They work at the same facility and use the same parking lot, warehouse, warehouse entry location and loading dock. All drivers use the drivers' room to access the Internet to download information onto their handheld devices, as well as to store the devices. Interaction between the two groups is limited because of their different shift times. However, based on the wide range of starting hours for the vending drivers and the fact that they spend the vast majority of their work day on their routes, there is limited opportunity for the vending drivers to interact with each other. The box trucks⁵ driven by both groups of drivers are the same except that they are differently configured inside consistent with the different products that are distributed.

⁴ CSM Murphy testified that one of the coffee drivers is paid by the hour due to his schedule, although he works full time.

⁵ One of the coffee drivers drives a van.

Since 2006, three vending drivers have permanently transferred to coffee driver positions; at least one of these employees transferred because of the increased physical demands of being a vending driver. CSM Murphy testified that vending drivers can be trained to work as coffee drivers as long as they have interpersonal skills and that otherwise the two groups have similar skills.

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 Transportation*, 322 NLRB 723 (1996). The Board determines whether the unit proposed by a petitioner is appropriate by evaluating whether employees have a sufficient community of interest. *Id.* at 724. The Board has broad discretion in deciding whether a petitioned-for unit is an appropriate unit. *Id.* at 723-724. 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 *Overnite Transportation* at 724. Another factor the Board considers is whether there have been significant instances of permanent or temporary transfers between the classifications at issue. *South Carolina Gas & Electric Company*, 243 NLRB 388, 389 (1979).

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

On the basis of the foregoing and the record as a whole, I conclude, contrary to the Employer, that the petitioned-for unit consisting of all of the Employer's full-time and regular part-time drivers is an appropriate unit. In reaching this conclusion, I have taken into account the facts that vending drivers and coffee drivers work in different departments and have separate accounting structures, are separately supervised, and have little or no day-to-day interaction or interchange with vending drivers. The Board has previously found two groups of employees to share a community of interest despite similar differences in their terms and conditions of employment. *South Carolina Electric & Gas Company*, 243 NLRB at 389. I have also taken into account the record evidence indicating that the coffee drivers have more interaction with customers, have less physically demanding work, infrequently handle cash, and work during the day; that the vending drivers work at night, have more heavy lifting, have less customer interaction, are responsible for collecting cash for every vending machine, carry perishable items, and are responsible for ensuring that food in the machines is safe and fresh; that the two groups receive different training; and that the manner in which compensation is determined varies somewhat between the two groups.

The foregoing notwithstanding, the record evidence establishes that all of the Employer's drivers share a unique function—they drive trucks for the Employer, distribute the Employer's products, and clean and fill the Employer's machines. In addition, all of the Employer's witnesses testified that both groups of drivers must be trustworthy, are not required to have a CDL, need interpersonal skills, interact with customers to at least some extent, and share similar skills and other qualifications. Although there are some differences in how wages are computed, both groups of

drivers have very similar pay ranges and all employees receive exactly the same fringe benefits. *International Bedding Co.*, 356 NLRB No. 168, slip opinion at 2 (2011). Even though everyday interaction is limited and the drivers do not interchange duties, there have been a significant number of permanent transfers from vending driver to coffee driver. *South Carolina Electric & Gas Company*, 243 NLRB at 388. Indeed, over half—three out of five—of the current coffee drivers were vending drivers.

The Employer, citing *Bartlett Collins Co.*, 334 NLRB 484 (2001), contends in its post-hearing brief that the Board prefers the smallest appropriate unit. Contrary to the Employer's contention, *Bartlett Collins Co.* is not on point here because in that case the employer sought to include other classifications of employees not sought by the petitioner. In this case, the Employer is seeking to exclude a classification of employees. Finally, excluding the 5 coffee drivers from the unit of 25 vending drivers would create a small residual group of drivers, a result the Board seeks to avoid where possible. *International Bedding Co.*, 356 NLRB, slip opinion at 2, citing *Airco, Inc.*, 273 NLRB 348, 349 (1984).

Accordingly, for all of the reasons set forth above, I conclude that the employees in the petitioned-for unit share a community of interest and the petitioned-for unit is appropriate for the purposes of collective bargaining.

E. Conclusion

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 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 Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and it 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 St. Paul, Minnesota facility; excluding warehouse employees, maintenance employees, and guards and supervisors as defined in the Act, as amended, and all other employees.

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 Allied Sales Drivers, Ambulance, Beer, Brewery, Grain Elevator, Retail Liquor, Livery, Malt House, Spring Water, Soft Drink, Taxi Cab, Vending Drivers, Helpers, Inside Employees and General Workers Union, Local 792, 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 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.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before close of business **June 18, 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 Regional Office by electronic filing through the Agency's website, www.nlr.gov,⁶ by mail, or by facsimile transmission at (612) 348-1785. 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 **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.

⁶ 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.

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 **June 25, 2012**.

The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁷ but may not be filed by facsimile.

⁷ 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 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.

Signed at Minneapolis, Minnesota, this 11th day of June, 2012.

/s/ Marlin O. Osthus

Marlin O. Osthus, Acting Regional Director
National Labor Relations Board
Region 18
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221