**Laerco Transportation and Warehouse; California Transportation Labor, Inc,; American Management Carriers, Inc,; Cal-American Transport, Inc.** ***and*** **International Longshoremen's and Warehousemen's Union, Petitioner.** Case 21-RC-17087

21 March 1984

## DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 21 January 1983 the Regional Director for Region 21 of the National Labor Relations Board issued his Decision and Direction of Election in the above-entitled proceeding.[1] The Regional Director found that Laerco Transportation and Warehouse, herein Laerco, and California Transportation Labor, Inc., herein CTL,[2] were joint employers,[3] and that the following employees of the employers constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including lift operators, shipping and receiving employees, warehousemen and dock employees and drivers employed jointly by Laerco Transportation and Warehouse, and California Transportation Labor, Inc., at facilities located at 14000 East 183rd Street, La Palma, California; 410 West Carob, Compton, California; and 1925 Vernon Avenue, Vernon, California; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations Laerco filed a timely request for review of the Regional Director's decision, contending that in finding Laerco and CTL to be joint employers the Regional Director departed from established Board precedent and that such a finding was not supported by the record. The Intervenor filed a timely request for review of the Regional Director's conclusion that Laerco and CTL are joint employers as well as requesting review of the unit determination.[4] The Petitioner opposed both requests for review and submitted a brief in opposition. By telegraphic order dated 18 February 1983, the Board granted both requests for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire record in this case with respect to the issues under review, including the briefs of the parties, and makes the following findings.

### The Joint Employer Issue

Laerco is engaged in the business of providing trucking and warehouse services to distribution operations of other businesses. Laerco consults with clients to determine the needs of the client with respect to warehousing and transportation. Once Laerco has identified client requirements it then requests that CTL provide it with the labor necessary to meet those requirements.

CTL, a California corporation which provides labor services, supplies labor to employers in the trucking and warehousing industry and has supplied employees to Laerco since 1977. CTL employees provided to Laerco work at the latter's warehouse in La Palma and for certain clients of Laerco at the locations involved herein.[5]

The driver service agreement by which CTL supplies employees to Laerco provides, inter alia, that Laerco agrees to use drivers furnished by CTL for its trucking operations; that Laerco will supply the vehicles used by CTL drivers; that CTL drivers will perform trucking services under Laerco's direction and will comply with safety regulations as Laerco may require; that Laerco will determine driver qualifications; that Laerco may refuse to accept any driver provided by CTL that does not meet Laerco's qualifications; and that CTL will furnish Laerco with such reports, records, and data as may be necessary to enable Laerco to comply with government regulations. CTL hires and fires[6] the employees provided to

[1] International Union of Petroleum and Industrial Workers, Seafarers' International Union of North America, AFL-CIO, intervened herein on the basis of a recently expired collective-bargaining agreement with California Transportation Labor, Inc.

[2] The parties stipulated that CTL, American Management Carriers, Inc., and Cal-American Transport, Inc. are a single employer for purposes of this proceeding.

[3] The Petitioner initially sought a unit of all production and maintenance employees employed by Laerco, RHF, and Winston at the above-mentioned locations, asserting that those employers and CTL in various combinations are either single or joint employers of the employees performing warehouse and driver functions at those locations. The Regional Director rejected the contention that either Winston or RHF was a joint employer or single employers with Laerco or CTL. At issue is whether Laerco is, in fact, a joint employer with CTL, apart from the unit issue raised by the requests for review.

[4] The Intervenor is the historic representative of approximately 100 CTL employees at various client locations. Fifteen of these employees are the subject of the present petition. The Intervenor asserts that the Regional Director's unit determination is at odds with longstanding and fundamental Board policy holding that the Board will not direct an election in a unit other than the historical bargaining unit unless that unit is clearly repugnant to the purposes and policies of the Act.

[5] Apparently there are six employees at La Palma, three drivers at Vernon, and six employees at the Compton location.

[6] There is some testimony that Laerco requested the removal of a CTL employee assigned to it with a subsequent transfer taking place.

Laerco and has historically negotiated their rates of pay with the Intervenor. CTL makes contributions and deductions as required by law and provides additional benefits under a collective-bargaining agreement with the Intervenor.

As stated above, CTL hires its own employees. Occasionally, clients of CTL refer individuals, who seek employment at the client's facility, to CTL for hiring. Once an individual is hired by CTL he will be assigned to one of CTL's more than 25 clients. The assignments are made based on CTL's understanding of the client's needs, the job description, and occasional requests made by the client. Laerco expects CTL employees assigned to it to meet its needs and contracts for the employees' services pursuant to a cost-plus contract.[7] A new CTL employee serves only one 30-day probationary period though the employee may be reassigned to other CTL clients. CTL's assignments of its employees among the client locations are usually on a permanent basis, with little interchange or transfer unless either the employee or the client requests such a transfer, or unless the particular operation itself is only temporary.

Once assigned by CTL to a Laerco facility, an employee is informed of the job duties as well as the facility safety considerations. These initial instructions may be made by CTL, Laerco, or both. Thereafter, there are no CTL supervisors at the Laerco facility.

One warehouseman provided by CTL testified that he was initially told what to do regarding loading and unloading trucks and where to place merchandise. Once informed of his duties, the employee routinely unloads merchandise, placing it in a designated area, or retrieves merchandise from those areas for loading. The employee reported that there is minimal supervision because "the employees don't need to be told what to do because everyone knows what to do." Whatever supervision occurs is often little more than a Laerco client telling an employee to give priority to one order over another. Another employee stated that each morning he reports to the Laerco warehouse[8] where he obtains an invoice. Based on the invoice the employee loads a truck and makes his deliveries. These functions are performed with little or no supervision. The record shows that any supervision which occurs is limited to informing the driver where to deliver a load or make a pickup.

Day-to-day control over labor relations of the CTL-supplied employees is handled in the following manner: The CTL employees assigned to Laerco report to the various Laerco facilities on a daily basis. When a problem concerning an employee provided by CTL arises, Laerco may attempt to resolve it. However, Laerco only attempts to resolve minor problems or employee dissatisfactions as an accommodation to CTL. Otherwise, CTL directly gets involved to resolve the problem. As to any disciplinary warnings or disciplinary actions against CTL employees who are contracted to Laerco, it is policy and practice to contact CTL. Grievances are directed to CTL for resolution.[9]

The record does not show any common management, ownership, or financial control between CTL and Laerco. They have separate offices, records, tax returns, managers, and supervisors.

The joint employer concept recognizes that two or more business entities are in fact separate but that they share or codetermine those matters governing the essential terms and conditions of employment.[10] Whether an employer possesses sufficient indicia of control over petitioned-for employees employed by another employer is essentially a factual issue. To establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction. In examining the relationship between Laerco and CTL, we find that Laerco does not possess sufficient indicia of control over CTL employees to support a joint employer finding.

It is undisputed that the major elements of the petitioned-for employees' terms and conditions of employment are determined by CTL in context of its collective-bargaining relationship with the Intervenor. In fact, the very acquisition and retention of their employment is controlled by CTL. CTL provides these employees to Laerco who, for the most part, supplies them to its clients. Thus, in the instant situation Laerco, itself, is removed from some of the daily worksites of the employees.

Laerco gives initial directions to the drivers regarding the routes to be followed. Thereafter, the

[7] The cost-plus contract between CTL and Laerco results in a pro forma adoption of the CTL-Intervenor master collective-bargaining agreement plus the attachment of a Laerco appendix incorporating particular specifications. Such specifications include the extent of health and welfare benefit coverage.

[8] Laerco owns or leases its warehouses which it then operates or leases to its clients. Laerco or the client maintains a warehouse manager at the facility to oversee the client's inventory and merchandise flow.

[9] It is CTL who is a party to the collective-bargaining agreement with the Intervenor, not Laerco. The agreement contains grievance procedures. Thus, if Laerco is able to ease the difficulty, it will do so voluntarily.

[10] *Boire v. Greyhound Corp.*, 376 U.S. 473 (1964); *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117 (3d Cir. 1982), enfg. 259 NLRB 148 (1981).

CTL-provided drivers merely follow the predetermined routes. Additionally, while there is some minimal day-to-day supervision of the petitioned-for employees by Laerco and/or Laerco clients, such supervision is of an extremely routine nature. While Laerco attempts to resolve minor problems, such as employee personality conflicts, its involvement is limited both as to the nature and number of employee problems. All major problems relating to the employment relationship are referred back to CTL for resolution.[11] The Regional Director found the supervision exercised by Laerco clients, RHF and Winston, to be so routine that it was insufficient to render them joint employers. So, too, we find the degree and nature of Laerco's supervision over CTL employees to be insufficient to render Laerco a joint employer with CTL.

Based on the foregoing, and relying particularly on the minimal and routine nature of Laerco supervision, the limited dispute resolution attempted by Laerco, the routine nature of the work assignments, and the fact that CTL and the Intervenor have had broad collective-bargaining agreements which effectively control many of the terms and conditions of employment of the petitioned-for employees, we conclude that Laerco is not a joint employer of the CTL employees. As the scope of the unit sought by the Petitioner was predicated on Laerco being a joint employer of the employees at the locations involved, our finding that Laerco is not a joint employer renders such a unit inappropriate and we shall therefore dismiss the petition.[12]

## ORDER

The Decision and Direction of Election is vacated and the petition is hereby dismissed.

[11] The record reveals that in one instance a Laerco client contacted Laerco about a problem it was having with an employee. CTL then contacted the Laerco client to resolve the matter.

[12] Having made such a finding, the Intervenor's request for review of the unit issue becomes moot.