

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

DURHAM SCHOOL SERVICES

Employer

and

Case 21-RC-21266

GENERAL TRUCK DRIVERS, OFFICE, FOOD
AND WAREHOUSE UNION, TEAMSTERS
LOCAL 952, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, (“Act”) on December 21, 2010, the General Truck Drivers, Office, Food and Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters (“Petitioner”) filed a petition seeking to represent certain employees employed by Durham School Services (“Employer”) working at or out of the Employer’s facilities in Santa Ana, Irvine, and Laguna Beach, California.

On January 6, 2011, a hearing in this matter was held before a hearing officer of the National Labor Relations Board (“the Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the

undersigned. Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions.²

I. Summary

The Employer is engaged in the business of providing transportation services. The Employer has had operations in several locations (called customer service centers) nationwide, including the following locations in Southern California:

- 828 W. 5th Street, Santa Ana, CA 92703 (“Santa Ana facility”)
- 100 Nightmist, Irvine, CA 92618 (“Irvine facility”)
- 2003 Laguna Canyon Road, Laguna Beach, CA 92651 (“Laguna Beach facility”)

The Petitioner seeks to represent a multi-location unit of bus drivers and aides at the Employer’s Santa Ana, Irvine, and Laguna Beach facilities.

The Employer’s position is that the petitioned-for, multi-location unit is not an appropriate unit because the Petitioner has not rebutted the presumption that a single-site unit is an appropriate unit for the purposes of collective-bargaining. The Employer urges that the Board instead order three separate elections in three separate units (one for each facility) because the three facilities are operated “independently of each another with little interchange and commonality.” The Employer’s primary arguments in support of this position are that:

- There is no centralized control of labor relations;
- There is only minimal interchange of employees; and
- The differences in the terms and conditions of the drivers’ employment at the three facilities make a multi-location unit inappropriate.

¹ The timely filed briefs of the Petitioner and the Employer were duly considered.

² The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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. The labor organization involved claims to represent certain employees of the Employer and 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.

Based on the record evidence, the post-hearing briefs filed by the parties, applicable Board law, and for reasons explained with more specificity below, I have concluded that:

- The single-site unit presumption is not applicable in this case;
- The petitioned-for unit is an appropriate unit for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time bus drivers and aides working at or out of the employer facilities at 2828 W. 5th Street, Santa Ana, CA 92703, 100 Nightmist, Irvine, CA 92618, and 2003 Laguna Canyon Road, Laguna Beach, CA 92651, and excluding all managers, supervisors, office/clerical, dispatchers, lot/yard men, mechanics, full-time safety trainers and all others as defined and described by the Act.

- I am, thus, directing an election in the multi-facility unit sought by the Petitioner.

II. Record Evidence

A. The Employer's Operations

Vivienne Williams³ ("GM Williams") is General Manager of the Employer's Santa Ana, Irvine, and Laguna Beach, California facilities. Each of these three facilities serves different customers under different contracts and is managed by a different site supervisor, each of whom reports to Williams. The Irvine and Laguna Beach facilities are located, respectively, 12 and 19 miles from the Santa Ana facility.

B. Application Process

Applicants for driver positions at each of the three facilities must complete a job application and pass a drug test. Successful applicants must possess a current Class C commercial license with a passenger endorsement, a bus driver certificate issued by the California Highway Patrol, and valid medical and first aid cards. These qualifications are required at the three facilities.

³ Williams was the only witness who testified at the hearing.

C. Drivers' Terms and Conditions of Employment

Upon beginning their employment, every driver is provided a copy of the Employer's employee handbook (which contains the Employer's nation-wide policies, including those regarding non-solicitation, appearance, attendance, pay, and discipline). In addition to the Employer's handbook, Irvine drivers are provided a separate handbook, which contains additional requirements⁴ imposed by the Irvine Unified School District ("IUSD"). In addition to the policies of the Employer, drivers and aides working out of the Employer's Irvine facility are required to wear black pants (and are not permitted to wear shorts), and at the beginning of each school year, report to an orientation session with the IUSD (in addition to the Employer-provided one day training that is required annually of all drivers)⁵. At least once per year, the Laguna Beach drivers meet with representatives of the Laguna Beach school district to discuss issues of common concern.

Drivers' pay is not set locally, but by management officials above GM Williams. The starting pay for Santa Ana drivers is \$12.10 per hour. Regular Santa Ana drivers are guaranteed a minimum of 4 hours per day of work, while Santa Ana "cover"⁶ drivers are guaranteed 5 hours. The starting wage for Irvine drivers is \$13 per hour⁷. Irvine drivers are guaranteed 5 hours of work per day, while aides⁸ are guaranteed 4 hours, and cover drivers, 6 hours. A group of drivers at the Irvine facility have higher, "grandfathered"

⁴ These requirements are not specified in the record.

⁵ Both of these requirements are set forth in the contract between the Employer and the IUSD.

⁶ Additional drivers, usually set at 10% of the regular driving staff, sometimes required by contract. The testimony did not make clear whether or not cover drivers are the "regular part time drivers" included in the petitioned-for unit.

⁷ This is required by the Employer's contract with the IUSD.

⁸ The record does not explain the job duties of driver aides, or whether their pay is comparable to drivers'.

wages of \$15-\$16 or more per hour⁹. The Laguna Beach drivers, whose pay starts at \$12.10 per hour (plus a \$1 per hour differential¹⁰) have a 4-hour daily guarantee.

The three facilities serve different customers. The 208 Santa Ana drivers, under several separate contracts, serve the Santa Ana Unified School District¹¹, Garden Grove School District, Central Regional Occupational Program, Orange County High School of the Arts, and Crean Lutheran High School. 90 percent of these passengers have “special needs.”¹² The Santa Ana drivers are also called upon to drive charter buses. The 60 drivers and 12 aides at the Irvine facility transport students of the IUSD under contract¹³. The 23 drivers and one aide at the Laguna Beach facility are contracted¹⁴ to service the Laguna Beach Unified School District. Bus passes are used in only the Irvine and Laguna Beach routes¹⁵. Irvine drivers’ routes are less densely populated than those in Santa Ana. The Laguna Beach drivers’ routes are somewhat unique, as the community is hilly.

The drivers’ work schedules depend upon the schedules of the district and/or school they service. From district to district and school to school, there are scheduling differences due to furlough days (4 in the IUSD in 2010), special vacations¹⁶, or year-round schedules (there are 13 year-round routes in Irvine¹⁷). According to the record testimony, there is not one seniority list or bidding process for routes at all three facilities. Regular bus routes and field trip routes are assigned to Irvine drivers by the IUSD. Santa

⁹ The record does not reflect the size of this group of drivers, or the reason for this grandfathered higher wage. According to the record, Irvine is the only facility (of the three concerned) with such drivers.

¹⁰ According to the record, this differential is necessary to entice drivers to accept and maintain routes in Laguna Beach.

¹¹ This contract expires in 2013.

¹² The record does not indicate whether this fact renders the working conditions of the Santa Ana drivers different from those in Irvine or Laguna Beach.

¹³ This contract expires at the end of the 2011 school year, with an option to renew.

¹⁴ This contract expires at the end of the 2011 school year.

¹⁵ The record does not indicate whether this fact renders the working conditions of the Santa Ana drivers different from those in Irvine or Laguna Beach.

¹⁶ Students in Laguna Beach have a week off school in February.

¹⁷ The record does not indicate how many routes there are in Irvine.

Ana and Laguna Beach drivers separately bid, annually (first for summer school, then for the fall) for routes, based on seniority. If a new driver is hired outside of the bidding season, or if there is a need for a route to be filled, he or she will be assigned a route, without regard to the bidding process¹⁸.

The three facilities use entirely separate dispatch systems to communicate with the drivers covering their routes. In Santa Ana, employees of the Employer dispatch drivers using two-way radios. In Irvine, an employee of the IUSD dispatches the drivers using a two-way radio. An employee of the Employer dispatches Laguna Beach drivers using Nextel phones. Pre- and post-trip inspections are performed in the same manner at each facility (the same amount of time is allotted to all drivers), as a matter of national policy. None of the drivers have to punch a time clock.

Payroll periods and pay dates are the same for employees of the three facilities. Pay checks for the Santa Ana and Irvine drivers are sent to the respective facilities, while the Laguna Beach employees' checks are sent to the Santa Ana facility¹⁹.

The fringe benefits provided the drivers at the three facilities are identical, and include medical, vision, and dental insurance, a 401(k) plan, and paid time off. Laguna Beach facility drivers alone also enjoy monthly activities, (i.e., a potluck in December for the holidays), planned by Site Supervisor Kathy Lee and recognition from the school district through events such as "Bus Driver Appreciation Day."

For the most part, the Employer's buses are kept at the facility where they are used. Exceptions to this practice include the fact that some of the Santa Ana facility's charter buses are stored at the Irvine facility, due to a lack of space at the Santa Ana

¹⁸ See Union Exhibit 4, which will be discussed below.

¹⁹ The record shows that these checks identify the employees' work location as 'Santa Ana,' not Laguna Beach.

facility. Also, “park outs²⁰” are permitted for Santa Ana and Laguna Beach drivers. On-site mechanics maintain the Employer’s fleets at the Santa Ana and Irvine facilities. The Irvine mechanics also service the Laguna Beach fleet, as that facility does not have mechanics on staff.

Buses and bus drivers are loaned between facilities when necessary, however. If a driver is absent at any of the facilities, a driver might be sent from another facility to cover the route²¹. If such an interchange is needed, site supervisors make arrangements directly with one another, keeping GM Williams informed. If there is a route open after all assignments are made, a Santa Ana driver may be assigned to work in Irvine, if necessary. According to the testimony, it is not common for Santa Ana drivers to be assigned to Laguna Beach²², and even less so for a Laguna Beach driver to be assigned to drive in Irvine. On a daily basis, an unknown number (but not more than 20, according to GM Williams) of the drivers are shuttled in a 19-20 person van from the Santa Ana facility to the Laguna Beach facility²³. Employees are shuttled from Santa Ana to Irvine much less frequently (though the frequency was not further described).

The Santa Ana and Laguna Beach facilities follow the same dress code as set forth in the employee handbook. As previously noted, Irvine drivers have a different uniform.

The Employer provides each driver with the approximately 10 hours of ongoing safety training needed to maintain his or her school-bus certification. The Santa Ana and

²⁰ A ‘park out’ is a practice whereby a driver is permitted to take the school bus home after work and start the next workday directly from home instead of coming first to the facility to pick up the bus.

²¹ According to GM Williams’ testimony, this “rarely” occurs.

²² Apparently, in the 6-7 months preceding the hearing, approximately 5 drivers were assigned out of Santa Ana to drive in Laguna Beach.

²³ This is also necessary, according to the record, to entice drivers by allowing drivers to travel from Santa Ana to Laguna Beach at the Employer’s expense. The record contains no details of how this shuttle is operated, such as where at the Santa Ana facility the employees wait for it.

Irvine facilities have their own safety trainers who provide the employees there with necessary training. Laguna Beach drivers receive their safety training at the Santa Ana facility. Presently, there are no joint meetings, trainings, or social events which drivers assigned to all three facilities are invited or expected to attend. Each facility has its own break room for the exclusive use of the drivers assigned to work there.

D. Interchange of Employees

If there is a shortage of drivers at the Irvine or Laguna Beach facility, drivers assigned to the Santa Ana facility will be assigned to ensure the runs are covered, though the record does not reflect how often this occurs and how long such assignments tend to last²⁴. Significantly, however, Williams testified that she issued, to all drivers, a memorandum, dated October 18, 2010, entitled, "Route Coverage Policy." (Union Exhibit 4) This document states that the Santa Ana facility supplies drivers for the Irvine and Laguna Beach facilities; that employees may, during bid season, bid for a position in Santa Ana or Laguna Beach; that drivers left without a route through the bidding process may be assigned a route at Irvine or Laguna Beach if all Santa Ana routes are covered; that all drivers will have the opportunity to bid on certain open routes during the year; and that all new drivers will be assigned a route, based on availability, at any one of the three facilities. This policy statement clearly indicates that there is a steady flow of drivers from one facility to another, based upon the Employer's needs. This policy statement also indicates that there is not a clear demarcation between "Santa Ana drivers", "Irvine drivers" and "Laguna Beach" drivers. Indeed, the policy statement

²⁴ For example, Williams characterized the occurrence of Santa Ana drivers being assigned to drive in Irvine as 'rare,' without further detail.

reveals that the Employer considers and the employees at the three facilities as interchangeable.

E. Supervisory Structure

a. Site Supervisors²⁵

Each facility is managed by a separate site supervisor who is responsible for daily operations, oversight and all hiring, firing, authorization of overtime, and payroll entry. Each site supervisor maintains, at the site, the personnel files for the site's employees. The site supervisors also deal with employee issues, disputes between employees, and investigations of misconduct allegations; and have the authority to, independently, decide upon discipline, up to administrative leave and termination. GM Williams urges the site supervisors to consult with the Employer's Human Resources department ("HR") (located at the Employer's Warrenville, IL headquarters) before disciplining or terminating an employee.

Site supervisors are empowered to enforce the provisions of the employee handbook and to issue policies regarding the operation of their respective facilities and the terms and conditions²⁶ of the employees at their site. If there is an absence at any one of the facilities, drivers may be sent from another facility to cover the route. According to GM Williams' testimony, this happens 'rarely,' given the Employer's use of cover drivers. If such an interchange is needed, site supervisors make arrangements amongst themselves, keeping GM Williams informed.

²⁵ None of the site supervisors were presented as witnesses.

²⁶ The examples provided in record testimony concerned maintaining the cleanliness of refrigerators, restrooms, and buses.

b. Role of General Manager Williams

GM Williams, who maintains her only office at the Santa Ana facility, testified that she usually spends very little time²⁷ at the Irvine and Laguna Beach facilities. Williams spends, on average, about 80 percent of her working time dealing with customer relations. She spends the remaining 20 percent of her time on financial and administrative matters.

The site supervisors are not required to consult GM Williams about labor relations matters, but they often do. In addition, after the fact, they often inform GM Williams about discipline meted out and provide her with copies of discipline-related documents, though they are not required to do so. GM Williams maintains these copies in files at her office. Williams does not attend disciplinary meetings unless asked to do so by the employee or the site supervisor.

The Employer's discipline policy provides that disciplinary actions issued at any of the three facilities can be appealed to Williams. The record does not reflect the frequency with which employees seek such appeals, but GM Williams testified that she could not recall reversing a local decision, nor sending one to her superior, Chuck Moore, for the next step in the Employer's appeal process. Williams, however, is ultimately held responsible for these facilities being in compliance with the Employer's policies.

On occasion, Williams issues memoranda to drivers at the Santa Ana facility or to all drivers. For example, she issued the above-noted 'Route Coverage Policy' memoranda to all drivers.

²⁷ She testified that in the 3 months preceding the hearing, she spent approximately one hour, at each of these two facilities.

III. Analysis

A. The Petitioned-for Multi-location Unit is Appropriate

a. Appropriate Unit for Collective-Bargaining

It is well-settled that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. *Overnite Transportation Company*, 322 NLRB 723 (1996) (citing cases). In deciding whether a petitioned-for unit is “appropriate” under Section 9(b), the Board's focus is on whether the employees share a “community of interest.” *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985) (quoting *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 134 (1944)). In arriving at an appropriate unit determination, the Board weighs various community-of-interest factors, including the following:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs ... the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. *Overnite Transportation Company*, 322 NLRB at 724 (citing cases)

b. Applicability of Single-Plant Unit Presumption

In cases where the petitioning labor organization seeks to represent a bargaining unit situated at a single location and the employer seeks to broaden the unit to include workers at one or more additional locations, the single-location bargaining unit presumption is applied. A single-facility unit is presumptively appropriate, unless the single facility “has been effectively merged into a more comprehensive unit”, or is so functionally integrated with another unit that it has lost its separate identity. *Budget Rent A Car*, 337 NLRB 884 (2002) (citing *R & D Trucking*, 327 NLRB 531 (1999)). The presumption, however, only tends to establish that a single-site unit, *when requested*,

constitutes an appropriate unit. Where, as here, the union seeks to represent employees in a multi-location unit, the presumption has no application. *NLRB v. Carson Cable TV*, 795 F.2d 879, 883-884 (9th Cir. 1986) (citing *NLRB v. First Union Management*, 777 F.2d 330, 334 (6th Cir. 1985)).

c. Community-of-Interest Analysis

The Board, in determining whether employees in a petitioned-for, multi-location unit share a community of interest to constitute an appropriate unit, considers several factors, including similarity in employee skills, duties, and working conditions; functional integration of the business, including employee interchange; centralized control of management and supervision; geographical separation of facilities; and collective bargaining history. *NLRB v. Carson Cable TV*, 795 F.2d at 884-885.

i. Employee Skills, Duties, and Working Conditions

Here, there is little question that the skills required of the drivers at the three locations are identical. The record shows that the same certifications are required for the drivers at all three facilities, and it appears that the buses driven at the facilities are more or less interchangeable. Similarly, the job duties of these drivers are identical. Though the routes and types of passengers may differ to some extent, the duties of the driver, including bus operation and pre- and post-trip inspections, remain the same.

The drivers all receive the same fringe benefits and, for the most part, similar wages²⁸. There are, however, some differences in the drivers' working conditions at the various locations. For example, at the Irvine facility, drivers wear a slightly different uniform and are required to attend an additional day of training with the IUSD. There are

²⁸ Contrary to the Employer's contention, I find that the approximately \$1 variance in starting pay between the three facilities is not significant.

also the different ways that routes are assigned and dispatched (assigned and dispatched by IUSD staff in Irvine, versus bidding and dispatch by the Employer in Santa Ana and Laguna Beach), and some differences in school schedules (differing numbers of furlough days, year round schedules), however, the record is silent as to the extent to which, if at all, these differences impact the drivers' terms and conditions of employment. Similarly, the record does not show the actual impact, if any, of the variance in the daily minimum number of hours (4 to 6) guaranteed the drivers, aides, and cover drivers per shift at the three facilities.

ii. Functional Integration

The record reveals that each of the facilities is run independently by its site supervisor, who is responsible for hiring a driving staff and ensuring that the various routes served by the facility are covered. If, however, a route at one of the facilities is left without a driver, either temporarily or on a longer-term, a driver may be sent from one of the other locations to cover it²⁹. The "Route Coverage Policy" memorandum reissued by the Employer on October 18, 2010 (Union Exhibit 4), explicitly states, among other things: "The Santa Ana Service Center supplies drivers for our contracts in Laguna Beach and Irvine."

Additionally, the record demonstrates that some number, perhaps nearing 100 percent of the 23 drivers assigned to work at the Laguna Beach facility, are transported to that facility on a daily basis, on a shuttle operated out of the Santa Ana facility. Though the record does not reflect the particulars of this shuttle operation, it is clear that some portion of the Laguna Beach drivers, twice per work day, are present at

²⁹ There is little specific evidence in the record, however, indicating how often such staffing interchanges occur, or their usual duration.

the Santa Ana facility. Finally, because some of Santa Ana's charter buses are stored at the Irvine facility, at a fairly regular interval, Santa Ana drivers travel to the Irvine facility to retrieve and return these vehicles.

iii. Centralized Management and Supervision

As noted above, each of the three facilities is run by a site supervisor who has full supervisory authority over the employees working there. Each of these site supervisors, in turn, reports to G M Williams, whose authority extends over the same three facilities. The record indicates that though each site supervisor has complete authority over decisions from hiring to termination, they follow the nation-wide protocol set forth in the employee handbook and are encouraged to consult with the Employer's HR department, located in Illinois. Additionally, the Employer's disciplinary policy provides that disciplinary actions taken by the site supervisors may be appealed to Williams. Though each of the three facilities is, ostensibly, independently managed by the site supervisor, these sites are also subject to a degree of centralized control because they are all overseen by Williams.

iv. Geographical Separation of Facilities

The three facilities are close enough to one another that employees and equipment are interchanged when necessary. The Irvine and Laguna Beach facilities are 12 and 19 miles, respectively, from the Santa Ana facility. The Irvine facility is close enough to the Laguna Beach facility that the maintenance mechanics who service the Irvine buses at the Irvine facility also maintain the Laguna Beach fleet. Additionally, as noted above, the Irvine facility is close enough to the Santa Ana facility to justify parking charter buses, operated exclusively by Santa Ana drivers, there.

v. Collective-Bargaining History

The record does not reveal any prior collective bargaining relationship between the employees of these three facilities and any labor organization. No other labor organization seeks to represent the employees at any of the facilities.

vi. Conclusion

Based on the entire record, I find that there is sufficient record evidence to establish a community of interest between the employees of the three facilities. The record demonstrates that there are more similarities than differences in the drivers' terms and conditions of employment. The temporary assignments of drivers to other facilities, coupled with the "Route Coverage Policy" memorandum, establishes that drivers are treated as interchangeable between the three facilities. Although there are separate site managers with full supervisory authority at each facility, the manner in which GM Williams is involved in disciplinary matters, as requested by site managers, and as set out in the Employer's disciplinary policies, demonstrates that a fair amount of authority is concentrated in the General Manager. The geographic proximity of the three facilities also favors a finding that the requested multi-facility is appropriate. Far greater distances have been deemed not to present an obstacle to employee participation in union activities. *See, e.g. Carson Cable TV*, 795 F.2d at 886. The fact that there is no previous bargaining history, the Petitioner has requested a multi-facility unit, and that no other labor organization is seeking to represent any subset of the requested unit, does not impact the appropriateness of the requested unit.

B. The Employer's Arguments Against the Appropriateness of the Multi-Location Unit

The Employer urges that the “single-facility presumption” is applicable here. As noted above, however, because the petitioned-for unit in this case is a multi-facility unit, not a single-facility unit, this presumption does not apply. Thus, there is no presumption to be rebutted. As discussed above, the appropriate analysis in this case is a consideration of the “community of interest” factors. Several of the arguments set forth by the Employer in support of the single-facility presumption are equally applicable in the determination of whether there is a community of interest among the employees in the petitioned-for unit. I will, thus, address the primary arguments set forth by the Employer.

a. Lack of Centralized Control of Labor Relations

The Employer argues that there is no centralized control of labor relations because of the extensive authority and independent discretion exercised by the site supervisors. The Employer cites the disciplinary actions taken by each site supervisor, which did not require the consent or knowledge of GM Williams; and the facility-specific policies and meetings announced by the site supervisors. GM Williams’ testimony demonstrates, however, that though the site supervisors may have the authority to act on their own, they often consult HR and/or GM Williams when disciplining or terminating employees. Indeed, GM Williams testified that she encouraged the site supervisors under her to consult HR before taking such action. With respect to the policies announced, these were not policies of substance, requiring independent discretion or judgment; rather, these were reminders about maintaining the cleanliness of the Employer’s facilities. As far as the required meetings, they were about basic subjects, mandated by external policies or requirements (the annual orientation contractually required of drivers by the IUSD and a

payroll matter). In short, the facts the Employer cites in support of a finding of a lack of centralized control of labor relations do not render the petitioned-for unit inappropriate.

b. Minimal Interchange of Employees

The Employer argues that the evidence shows a minimal amount of employee interchange between the three facilities. As discussed above in detail, the Employer's practice of operating a daily shuttle from Santa Ana to Laguna Beach, and storing Santa Ana charter buses at the Irvine facility, indicate a substantial degree of employee interchange and interaction. Significantly, the "Route Coverage Policy" memorandum, issued this fall to all employees, indicates that there is substantial interchange between drivers at the three facilities, based upon the Employer's need to have all routes covered. The facts cited by the Employer in this regard are insufficient to establish that the petitioned-for unit is inappropriate.

c. Differences in Drivers' Terms and Conditions of Employment

The Employer argues that the differences in the terms and conditions of employment are so varied among the drivers at the three facilities that it is not appropriate to include them in one unit for the purposes of collective bargaining. The Employer cites to the different rates of pay; the different customers and routes serviced at the different facilities; the manner in which job assignments are made and dispatch is effected; the different training requirements; and the different work schedules.

As noted above, I have found that the \$1 variance in pay is not significant. Furthermore, the record contains no evidence³⁰ indicating what, if any, difference in overall compensation results from the varying hourly guarantees. The record does not indicate any difference experienced by Irvine drivers as a result of being subject to the

³⁰ No employees who belong to the petitioned-for unit provided testimony at the hearing.

IUSD handbook. Moreover, the difference in the uniform policy applied to Irvine drivers is insignificant. The record contains no evidence that, as a result of the different customers served by the three facilities, the drivers' conditions of employment are measurably different from one facility to the next.

There is also no evidence in the record that the fact that routes are assigned or awarded through bidding have any impact on the drivers' terms and conditions of employment. In either instance, no driver can select his or her own route, so any "difference" is of little import. There is also no evidence that the manner of dispatch, has any bearing upon the drivers' terms and conditions of employment. Similarly, the evidence does not show that the orientation-type meetings required at the Irvine and Laguna Beach facilities, and any training provided for the Laguna Beach terrain, when compared to any conditions unique to the Santa Ana facility, would amount to a significant difference to drivers.

IV. Conclusion

Based on the evidence and the entire record, I find that the following is an appropriate unit and I shall direct an election in this unit:

All full-time and regular part-time bus drivers and aides working at or out of the employer facilities at 2828 W. 5th Street, Santa Ana, CA 92703, 100 Nightmist, Irvine, CA 92618, and 2003 Laguna Canyon Road, Laguna Beach, CA 92651, and excluding all managers, supervisors, office/clerical, dispatchers, lot/yard men, mechanics, full-time safety trainers and all others as defined and described by the Act.

There are approximately 305 employees in the unit.

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 the **General Truck Drivers, Office, Food and Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters**. The date, time, and place of the election will be specified in the notices 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 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.). 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 **February 10, 2011**. No extension of time to file this list will 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 to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,³¹ by mail, or by facsimile transmission at (213) 894-2778. 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 **four** copies of the list, unless the list is submitted by facsimile or e-mail, in which only **one** copy 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 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).

³¹ 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.

Failure to do so stops 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 **February 17, 2011**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,³² but may not be filed by facsimile.

DATED at Los Angeles, California, this 3rd day of February, 2011.



William M. Pate
Acting Regional Director, Region 21
National Labor Relations Board

³² 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.