

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SEVEN

AURLP HOLDINGS, LLC d/b/a  
ARROW UNIFORM,

Case No.: 07-RC-091307

Employer,

and

LOCAL 51, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS (IBT)

Petitioner.

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**EMPLOYER AURLP HOLDINGS, LLC d/b/a ARROW UNIFORM'S ANSWERING  
BRIEF TO PETITIONER'S TEAMSTERS, LOCAL 51'S EXCEPTIONS TO THE  
HEARING OFFICER'S REPORT AND RECOMMENDATIONS**

Employer AURLP Holdings, LLC d/b/a Arrow Uniform ("Employer" or "Arrow Uniform"), pursuant to Section 102.69(f) of Rules and Regulations of the National Labor Relations Board ("the Board"), hereby files its Answering Brief in Opposition to the Petitioner's Exceptions to the Hearing Officer's Report and Recommendations and state as follows:

**I. INTRODUCTION**

On or around November 26, 2012, an election was conducted by secret ballot pursuant to a Stipulated Election Agreement, approved on or about October 29, 2012. Arrow

Uniform (“Arrow” or “the Employer”) employees who were included in the proposed bargaining unit were the following:

All full-time and regular part-time relay drivers employed by the Employer, at and out of, its facility located at 6400 Monroe Blvd., Taylor, Michigan, but excluding all office employees, professional employees, technical employees, managerial employees, confidential employees, route sales representatives, and guards and supervisors as defined in the Act.

(Stipulated Election Agreement, Paragraph 5). The tally of the ballots revealed five (5) for and four (4) against the Petitioner Local 51, International Brotherhood of Teamsters (“Petitioner” or “the Union”) with one (1) challenged ballot. Petitioner challenged the ballot of Arrow employee Dennis G. King. (U. Ex. 1). The challenged ballot is determinative of the election’s results.

A preliminary investigation was conducted by the NLRB Region 7 Director Terry Morgan. On or about December 4, 2012, Regional Director Morgan issued a Notice of Hearing on the Determinative Challenged Ballot. On or about December 13, 2012, a hearing was held before NLRB Region 7 Hearing Officer Jason E. Knepp (“Hearing Officer”) at the NLRB Region 7 Office in Detroit, Michigan.

On February 14, 2013, Hearing Officer Knepp issued his report, making findings of fact and conclusions that the Petitioner’s challenge to the ballot of King be overruled. The Hearing Officer ordered that King’s ballot be “opened and counted and that the result be incorporated in a revised tally of ballots and the appropriate certification issue”. (Hearing Officer’s Report, p. 1).

On or about February 26, 2013, the Petitioner filed Exceptions to the Hearing Officer’s decision, challenging the Hearing Officer’s findings that King shares a community

of interest with the employees included in the stipulated bargaining unit and that King is a regular part-time employee with an established pattern of regular employment.

## II. STATEMENT OF FACTS

### A. The Employer's Operations

The Petitioner seeks to represent full-time and regular part-time employees at and out of its facility at 6400 Monroe Boulevard, Taylor, Michigan. The Employer provides industrial uniform services from linens, uniforms to mats to about 20,000 customers, including Ford Motor Company, Severstal Steel and Bob Evans restaurants. (Paragraph 2 of Stipulated Election Agreement; Tr. 1, p. 13:4-19).<sup>1</sup> The production facility in Taylor, Michigan is responsible for cleaning, sorting and mending soiled garments and products which are subsequently delivered to the Employer's branches. (Tr. 1, p. 14:21-15:1). The Employer's branches are located in: Grayling, Michigan; Kalamazoo, Michigan; Warren, Michigan; Jackson, Michigan; Fort Wayne, Indiana; Columbus, Ohio; Maumee, Ohio; Cleveland Ohio and Pittsburgh, Pennsylvania. (Tr. 1, p. 15:16-19).

The Employer's relay drivers<sup>2</sup> are responsible for transporting the garments and products to and from the Taylor facility to the branches and the used material from the branches to the Taylor facility. (Tr. 1, p. 20:17-21). After the relay drivers deliver the products to the Employer's branch, the Employer's route sales representatives deliver the products to the customers. (Tr. 1, pp. 16:16:24, 17:18-22).

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<sup>1</sup> References to the Transcript will be notated with "Tr." followed by the page number and the specific line number references. Where the lines may carry over to another page the cite will not end at line 25 and restart the next page at line number at 1, but rather will indicate with a hyphen the final end line of the cite. (e.g., Tr. 1,p. 1:16-2:15 runs from Line 16 on Page 1 of transcript to Line 15 on Page 2).

<sup>2</sup> There are at least eleven relay drivers, including King, out of the Taylor facility. (Tr. 1, p. 45:18-20).

**B. Employee Dennis King**

Arrow employee Dennis G. King was first hired by the Employer in October 2006. (E. Ex. 2). He is a part-time employee who earns \$12.00 per hour. (Tr. 1, p. 31:3-4; E. Ex. 2). In March 2008, King was transferred from the Taylor Garage to the Central Relay. (Tr. 1, p. 39:4-6). Other Arrow employees assigned to the Central Relay Division included relay drivers who transport or pick up products between the Taylor plant and Arrow's Michigan branches, which include: "Grayling, Saginaw, Grand Rapids, Jackson, Warren, and Kalamazoo." (Tr. 1, p. 39:16-20). After King's transfer to the Central Relay Division, his primary job responsibilities include transporting clean products to Arrow branches and transporting soiled products to the Taylor plant.<sup>3</sup> (Tr. 1, pp. 25:15; 6:8-11; p. 88:14-16).

Arrow Production Managers Nathan Mathew and Jason VanChick supervise King. (Tr. 1, p. 66:21-23). Relay drivers at the Taylor facility also report to Mathew and VanChick. (Tr. 1, pp. 115:23-116:2). At the hearing, Mathew explained that when he phones King to work, Mathew's expectation is "that [King] say yes..." (Tr. 1, p. 113:20-23). Mathew further indicated that he considers King to be a regular part-time employee who has "never turned me down". (Tr. 1, p. 113:25-114:1). Matthew stated at the hearing that he and VanChick also supervise the relay drivers employed at and out of the Employer's Taylor facility. (Tr. 1, p. 115:23-116:2).

In the 13-week period immediately prior to the eligibility date of October 20, 2012, the total number of hours King worked was 89.25 hours. (E. Ex. 5, pp. 2-3). For the 2011 calendar year, King worked an average of 5.67 hours per week. From January 1, 2012 to the election eligibility date, King worked an average of 8.27 hours per week. (E. Ex. 5 and 6).

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<sup>3</sup> Mr. King is employed out of the Taylor facility, as it is where he begins and ends his workday. (Tr. 1, p. 32:14-16).

### III. ARGUMENT

#### A. Hearing Officer Knepp Properly Determined that Arrow Employee Dennis King Shares a Community of Interest with the Employees in the Stipulated Bargaining Unit.

Petitioner erroneously contends that the Hearing Officer's findings of similarities between King and employees in the stipulated bargaining unit "really do not indicate a community interest". (Petitioner's Exceptions, p. 2). Specifically, Petitioner claims in its Exceptions that King does not share a community of interest with the relay drivers because of the difference in job duties and functions, pay and benefits between King and the relay drivers. (Petitioner's Exceptions, pp. 2-3). The record evidence and Board precedent however establishes otherwise; and thus Petitioner's Exceptions should be denied.

##### 1. *Employee King regularly performs duties similar to those performed by the full-time relay drivers and thereby should be included in the unit.*

The Hearing Officer was correct in finding that King is a dual function employee who "regularly performs duties similar to those performed by the bargaining unit employees for sufficient periods of time..." (Hearing Officer's Report, p. 9). In *Air Liquide America Corp.*, 324 NLRB 661, 662, the Board stated that the standard to determine whether or not a dual function employee should be included in the bargaining unit is "whether the employee [performs unit work] for sufficient periods of time to demonstrate that he ... has a substantial interest in the unit's wages, hours, and conditions, of employment." (citing *Beria Publishing Co.*, 140 NLRB 516, 518-19 (1963)). The Board subsequently found that a dual function employee has a substantial interest with unit employees even if he or she performed unit functions less than half the time. *Wilson Engraving Co.*, 252 NLRB 333, 334 (1980).

Petitioner states on page two of its Exceptions to the Hearing Officer's Report "[relay drivers] are employed to transport clean and soiled product." (Petitioner's Exceptions, p. 2) (emphasis added). Likewise, King's time cards for the 2012 calendar year show that approximately 88% of his hours were spent performing such bargaining unit work.<sup>4</sup> (E. Ex. 7). It is thus clear that King has a substantial interest in the stipulated bargaining unit's wages, hours, and conditions of employment, and Petitioner's Exceptions should be denied.

2. *The Hearing Officer properly found that the differences in benefits were not an adequate basis to exclude King from the stipulated bargaining unit.*

Petitioner contends in its Exceptions that the differences between the pay and benefits received by King and what is received by the relay drivers "eliminate any community of interest." (Petitioner's Exception, p. 3). This Exception is not supported by the record evidence and Board precedent, and thus should be denied.

The Board in *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998), found that the facts that the disputed employees' wages were different from bargaining unit members and that they did not receive fringe benefits were not adequate reasons to exclude the disputed employees from the unit. According to the Board, these disputed employees "do not have the same benefits because of an Employer's decision to limit certain benefits to full-time employees." *Id.* See also, NLRB Regional Director for Region 7 Decision and Direction of Election in *Crittenton Hosp*, 328 NLRB 879, 883 (1999) (finding that the lack of fringe benefits and a different pay scale did not create separate community of interest where the employees were doing the same job in the same place under the same supervisor).

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<sup>4</sup> Arrow Production Manager for the Second and Third Shifts Nathan Mathew's testimony further supports the Hearing Officer's finding that King regularly performs duties similar to those performed by relay drivers for sufficient periods of time. Mathew estimated at the hearing that approximately 95% of King's duties include "delivering soiled and picking up dirties" from the Employer's branches. (Tr. 1, p. 90:15-16).

Similarly, the differences in pay and benefits do not defeat the community of interest established from King and the relay drivers who perform the same job under the same supervisor. King earns \$12.00 per hour, whereas the relay drivers earn approximately \$16.00 to \$17.00 per hour. (Tr. 1, pp. 57:13-16; 58:10-12). As a part-time employee, King does not receive benefits. (Tr. 1, p. 92:18-20). According to the testimony from Arrow Production Manager for Second and Third Shifts Nathan Mathew, if King's work hours were to increase to an average of 36 hours per week, he would then receive the same benefits as the full-time relay drivers. (Tr. 1, p. 92:18-22). The Hearing Officer was therefore correct in determining that the differences in regards to pay and fringe benefits between King and the relay drivers were insufficient bases to exclude King from the stipulated bargaining unit. King shares a sufficient community of interest with the bargaining unit and thus Petitioner's challenge to King's ballot should be overruled.

**B. The Hearing Officer did not Err in Finding that Arrow Employee King was a Regular Part-Time Employee who Should be Included in the Stipulated Bargaining Unit.**

The Petitioner contends that even if King shares a community of interest with the stipulated bargaining unit, he is not a regular part-time employee. Particularly, the Petitioner claims King is a "Gopher" who "can refuse to come in and not be charged with an absence or any repercussions." (Petitioner's Exceptions, p. 2). Any claim by Petitioner regarding King as an "on-call" employee lacks merit.

According to the Board, in *Pat's Blue Ribbons*, 286 NLRB 918, 918 (1987), "the ability to reject work is not determinative of an individual's employment status so as to exclude the individual from the unit as a casual employee." (emphasis added). Instead, the Board in *Pat's Blue Ribbons* explained that to determine whether an employee is a regular

part-time employee, consideration should be given to factors such as “regularity and continuity of employment, length of employment, and similarity of work duties.” *Id.*

King has been employed by the Employer since October 2006. (E. Ex. 2). He has performed work similar to those performed by bargaining unit members since March 2008. (Tr. 1, p. 39:4-6). King’s supervisor Nathan Mathew testified that King has the ability to reject work, but King has not done so during his tenure with the Employer. (Tr. 1, p. 113:25-114:1). When King reports to work, he has the same responsibilities as the Employer’s full-time relay drivers, which is to deliver clean products to the Employer’s branches and to transport the soiled products from the branches to the Taylor plant. (Tr. 1, p. 25:15; 6:8-11; p. 88:14-16).

Further, the Hearing Officer properly rejected the Petitioner’s claim that King was an on-call employee who should be classified as an irregular part-time employee. The Hearing Officer relied upon Board’s decision in *Davison-Paxson Co.*, 185 NLRB 21 (1970). The Board in *Davison-Paxson Co.* wrote the following:

[W]ith the exception of certain employees whose exclusion is required by Board policy such as temporary or seasonal employees, any contingent or extra employee who regularly averages 4 hours or more per week for the last quarter prior to the eligibility date has a sufficient community of interest for inclusion in the unit and may vote in the election.

*Id.* at 24.

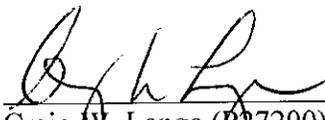
King worked a total of 82.25 hours, or an average of 6.87 hours per week during the 13-week period immediately before the election eligibility date of October 20, 2012. (E. Ex. 5, pp. 2-3). For the 2011 calendar year, King worked an average of 5.67 hours per week; and from January 1, 2012 to the election eligibility date of October 20, 2012, King worked an average of 8.27 hours per week. (E. Ex. 5 and 6). Because the record evidence demonstrates

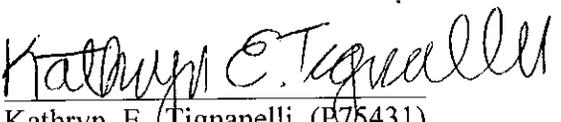
that King is a regular part-time employee with a pattern of continuing employment, the Hearing Officer's findings that King should be included in the stipulated bargaining unit should be upheld.

#### IV. CONCLUSION

For the reasons set forth above and in the Hearing Officer's Report and Recommendations, it is urged that Petitioner's Exceptions be denied in their entirety. It is further respectfully requested that the Board affirm the Hearing Officer's finding of facts, conclusions of law, and recommended Remedy.

Respectfully Submitted,  
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Dated: March 7, 2013

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 7, 2013, I filed the foregoing paper (Employer AURLP's Holdings, LLC d/b/a Arrow Uniform's Answering Brief to Petitioner's Teamsters, Local 51's Exceptions to the Hearing Officer's Report and Recommendations) with the National Labor Relations Board using the E-Filing System. I hereby certify that I served a copy of the Employer Answering Brief to Local 51's Exceptions upon Terry A. Morgan, Regional Director for the National Labor Relations Board Region 7, 477 Michigan Avenue, Room 300, Detroit, MI 48226-2569 by placing same in a sealed envelope, properly addressed, with postage prepaid thereon and by depositing same into the United States Government Mail at Clinton Township, Michigan and to Kevin J. O'Neill, Attorney for the Petitioner, by emailing said Answering Brief to [kevino21@hotmail.com](mailto:kevino21@hotmail.com).



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