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

FEDEX FREIGHT, INC. Employer	
and	Case 22-RC-134873[1]
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 701[2] Petitioner	

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

If a petitioner seeks to represent a unit of employees that is readily identifiable as a group and shares a community of interest, the unit will be found appropriate unless a party seeking a broader unit demonstrates that the employees it seeks to add share an overwhelming community of interest with the employees in the petitioned-for unit. The Petitioner, Teamsters Local 107, filed a petition to represent a unit of City Drivers and Road Drivers employed by the Employer at its South Brunswick Terminal located in Monmouth Junction, New Jersey.[3] The Employer contends that this unit is inappropriate because it excludes the Employer's Dockworkers.[4]

A Hearing Officer of the Board held a hearing at which a series of stipulated facts and exhibits were admitted into evidence. The parties' Stipulation of Facts adopts significant portions of the record of the hearing in Case 04-RC-133959 involving a petition filed by Teamsters Local 107 to represent a similar unit at another one of the Employer's facilities. The parties stipulated their request that the briefs filed in Case 04-RC-133959 be considered as if filed in this case, and did not submit any additional briefs in this case. I have considered the evidence and the arguments presented by the parties and because the City Drivers and Road

[1] By Order dated September 29, 2014, the General Counsel transferred this case to Region 4 for decision.
[2] The names of the Employer and Petitioner appear as corrected at hearing.
[3] The petition also sought "shuttle and line haul drivers," but as the record establishes that City Drivers and Road Drivers are the only driver classifications at the Employer's facility, these classifications are not included in the petitioned-for unit or considered in this Decision.
[4] The Employer does not seek to include in the unit the part-time Dockworkers known as "Supplemental Dockworkers;" the Union contends all Dockworkers, including Supplemental Dockworkers, should be excluded.

Drivers constitute a readily identifiable group and share a community of interest, I have concluded that the petitioned-for unit is appropriate and that the Employer has failed to meet its burden to show that they share an overwhelming community of interest with the Dockworkers.

In this Decision, I will first provide an overview of the Employer's operations. Then, I will set forth the legal standards to be applied in resolving the community-of-interest issues presented in this case, and I will set forth the facts and reasoning which support my conclusions.

I. OVERVIEW OF OPERATIONS

The Employer provides freight pick-up and delivery services for customers across state lines from numerous terminals, including its South Brunswick Terminal (the Terminal) located in Monmouth Junction, New Jersey. The Employer picks up and delivers freight directly from and to customers, and between FedEx terminals. The Employer operates on a 24-hour basis and is open seven days per week, closing only from midnight on Saturday to noon on Sunday.

The Terminal consists of one building surrounded by a yard. The building contains administrative offices and a dock with 120 operational doors and one ramp door. The yard that surrounds the building is used for storing the Employer's tractors, trailers, and other equipment.

Service Center Manager Martin Underwood manages the day-to-day operations of the Terminal and is the highest ranking management official there. Three Operations Managers report directly to Long, and twelve Operations Supervisors directly supervise the Employer's employees.

The Employer employs 166 City Drivers, Road Drivers, and Dockworkers at the Terminal. There are 81 City Drivers, 33 Road Drivers, and 52 Dockworkers.[5] Ten of the 56 Dockworkers are enrolled in the Employer's dock-to-driver program and are also known as driver apprentices. There are also office clerical employees and one building maintenance employee employed at the Terminal; the parties agree that these employees are properly excluded from any unit.[6]

The Employer uses a payroll and time-keeping system known as Kronos. Kronos categorizes the employees as Dockworkers, City Drivers and Road Drivers. Kronos tracks employees' hours and wages according to the work they perform, using four categories: (1) "city hours," which calculates the hours an employee spends performing City Driver work; (2) "road miles," which calculates the number of miles driven by an employee performing Road Driver work;[7] (3) "dock hours," which calculates the hours an employee spends working on the dock; and (4) "hostling hours," which calculates the hours an employee spends moving trailers around the yard and to and from docks.

[5] There are 20 full-time Dockworkers and 32 part-time Dockworkers, known as "Supplemental Dockworkers."
[6] The parties stipulated that there are presently no Mechanics working at the Terminal, but that if there were, they should be excluded from any unit.
[7] Kronos also estimates the number of work hours based on the road miles an employee drives.

II. THE RELEVANT LEGAL STANDARDS

The Act does not require that the unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, it requires only that the unit be *an* appropriate one. *International Bedding Co.,* 356 NLRB No. 168 (2011); *Overnite Transportation Co.,* 322 NLRB 723 (1996); *P.J. Dick Contracting,* 290 NLRB 150 (1988). Procedurally, the Board examines the petitioned-for unit first. If that unit is appropriate, the inquiry ends. *Wheeling Island Gaming,* 355 NLRB No. 127 (2010); *Bartlett Collins Co.,* 334 NLRB 484 (2001). It is only where the petitioned-for unit is not appropriate that the Board will consider alternative units, which may or may not be units suggested by the parties. *Bartlett Collins Co.,* supra; *Overnite Transportation Co.,* 331 NLRB 662, 663 (2000). In *International Bedding,* supra, slip op. at 2, the Board emphasized that the petitioner's position regarding the scope of the unit is a relevant consideration, citing *Marks Oxygen Co.,* 147 NLRB 228, 230 (1964). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking,* 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.,* 163 NLRB 677 (1967), enfd. 411 F.2d 356 (7th Cir. 1969), cert. denied 396 U.S. 832 (1969).

In determining whether a proposed unit is appropriate, the focus is on whether employees share a community of interest. *NLRB v. Action Automotive, Inc.,* 469 U.S. 490, 491 (1985). To make this determination, the Board examines such factors as employee skills and job functions; common supervision; contact and interchange; similarities in wages, hours and other terms and conditions of employment; functional integration; and bargaining history, if any. *Publix Super Markets*, 343 NLRB 1023 (2004); *United Operations, Inc.,* 338 NLRB 123 (2002); *Bartlett Collins Co.,* supra*; Home Depot USA,* 331 NLRB 1289 (2000).

In *Specialty Healthcare and Rehabilitation Center of Mobile,* 357 NLRB No. 83, slip op. at 10-13 (2011), the Board clarified the framework to be applied in making unit determinations where a party seeks a unit that is broader than the petitioned-for unit. Pursuant to this decision, the Board first looks at whether the petitioner seeks a unit consisting of employees "who are readily identifiable as a group," based on job classifications, departments, functions, work locations, skills, or similar factors, and whether these employees share a community of interest. In *Macy's, Inc.,* 361 NLRB No. 4, slip op. at 8 (2014) and *Bergdorf Goodman,* 361 NLRB No. 11, slip op. at 2 (2014), the Board made it clear that whether the employees are "readily identifiable as a group" and whether they share a community of interest are two separate inquiries. If both standards are met, the party seeking a broader unit must demonstrate "that employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit." [Emphasis added]. Additional employees share an overwhelming community of interest with petitioned-for employees only where there is no legitimate basis upon which to exclude them from the unit because the traditional community-of-interest factors overlap almost completely. See *Fraser Engineering Co.*, 359 NLRB No. 80, slip op. at 1 (2013); *Northrop Grumman Shipbuilding, Inc.,* 357 NLRB No. 163, slip op. at 3 (2011), enf. denied on other grounds sub nom. *NLRB v. Enterprise Leasing Co. Southeast,* 722 F. 3d 609 (4th Cir. 2013). On the other hand, the Board will not approve a petitioned-for fractured unit that seeks "an arbitrary segment" of what would be an appropriate unit. *Bergdorf Goodman,* supra, slip op.

at 4 (2014); *Odwalla, Inc.,* 357 NLRB No. 132, slip op. at 5 (2011); *Specialty Healthcare,* supra, slip op. at 13; *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999).

III. FACTS

A. Job Functions and Terms and Conditions of Employment

City Drivers

City Drivers pick up and deliver freight locally directly to and from customers and to FedEx facilities. City Drivers drive tractor-trailers and spend the bulk of their day away from the Employer's terminal, making many stops throughout the day. The City Drivers' job description also states that they are expected to communicate directly with customers about deliveries and to solicit additional business. These duties accounted for approximately 95% of City Drivers' work in the six-month period between February 1, 2014 and July 31, 2014 (the six-month period).[8]

Although City Drivers are trained by the Employer to perform dock work and required to maintain current forklift certifications, City Drivers do not perform this type of work frequently. While, in the six-month period, 73 of the 81 City Drivers performed some dock work, only 22 of these 73 performed more than 20 total hours of dock work during the six-month period. Of these, nine City Drivers accounted for 64% of all the dock work performed by City Drivers. As a group, City Drivers spent 3.5% of their time performing dock work. Normally, City Drivers only work the dock if they elect to, usually in order to supplement their hours if their driving hours are short in a given week. Though the Employer can mandate dock work, it generally accommodates City Drivers' preferences to work the dock or elect not to do so.

A few of the City Drivers also are assigned to move trailers and other equipment in the yard, known as "hostling." Only three City Drivers performed hostling work during the six-month period. One of the three accounted for 92% of the hostling hours performed by City Drivers. Hostling work accounted for 0.8% of the work performed by City Drivers, as a group, during the six-month period.

Finally, City Drivers are occasionally called upon to perform the work of Road Drivers. In total, 26 of the 81 City Drivers completed some road work during the six-month period. Road hours accounted for 1.1% of all the work performed by City Drivers.

City Drivers are all required to possess Class A Commercial Driver's Licenses (CDLs) with double/triple, hazardous materials, and tank endorsements. They must have acceptable Motor Vehicle Reports (MVRs) and are subject to random drug testing. When hiring City Drivers, the Employer seeks drivers with a minimum of one year of experience, but the Employer also promotes Dockworkers into the City Driver position if they complete a bridge program, as discussed below.

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[8] The hours of work, classified by type, recorded during the six-month period are the only evidence of this type in the record. Neither party contends that the six-month period is not a representative period for this purpose.

City Drivers are all employed on a full-time basis and average a 43-hour workweek. Their hourly wages range between $20.63 and $24.93 per hour. Their yearly wages average about $50,000. Wages are determined by seniority. It takes City Drivers three years to reach the top rate of $24.93 per hour. There is no evidence regarding the shifts worked by City Drivers.

The Employer maintains a separate seniority list for City Drivers. Based on their seniority, City Drivers bid on runs. However, there is no record evidence regarding the difference between the different runs on which City Drivers bid.

Road Drivers

Road Drivers transport freight between the Terminal and other FedEx facilities. They drive tractor-trailers and the vast majority of them spend the bulk of their time away from the Terminal. These driving duties comprised approximately 89% of all the work performed by Road Drivers in the six-month period.

Like City Drivers, Road Drivers are trained by the Employer to perform dock work and maintain current forklift certifications. Road Drivers who perform dock work normally do so before departing the Terminal to go on a run or after they return from a run. They may also be required to work the dock at the FedEx facility to which they travel. Overall, dock working duties accounted for about 10% of all the work performed by Road Drivers during the six-month period, but most of this work was performed by a small group of Road Drivers.[9] About 18 of the 33 performed some dock work during the six-month period. The average Road Driver tallied 147.32 hours of dock work during the six-month period, but the median number of hours worked on the dock by Road Drivers was 109.85. As these numbers suggest, dock work is not evenly distributed among the Road Drivers. Six Road Drivers accounted for about 69% of all the dock work during the six-month period, and the top 9 Road Drivers for quantity of dock work performed approximately 87% of all the dock work during the same time period. Much like their City Driver counterparts, Road Drivers are rarely required to work the dock, but do so voluntarily in order to supplement their hours. Whenever possible, the Employer accommodates a driver's desire to perform, or not perform, dock work.

Hostling and City Driver work accounted for a very small proportion of the Road Drivers' workload, at 0.2 % and 2%, respectively.

Road Drivers must meet the same job qualifications as City Drivers. Road Drivers are required to carry Class A Commercial Driver's Licenses (CDLs) with double/triple, hazardous materials and tank endorsements. They must have acceptable Motor Vehicle Reports (MVRs)

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[9] The Kronos payroll figures showing the breakdown of work by Road Drivers do not account for the 30 minutes Road Drivers work each time they uncouple their trailers and put them on the dock. There is no evidence as to how frequently Road Drivers perform this task. This is considered part of a Road Driver's regular driving duties. Presumably, accounting for these hours could significantly decrease the proportion of time Road Drivers work the dock relative to their regular driving duties.

and are subject to random drug testing. When hiring Road Drivers, the Employer seeks drivers with a minimum of one year of experience, but the Employer also promotes dockworkers into the Road Driver position if they complete the bridge program, as discussed below.

Road Drivers are employed on a full-time basis. Unlike City Drivers, they are paid an hourly rate while performing dock, city, or hostling work, but are paid a mileage rate when performing their regular road driving duties. Their hourly wages range between $20.63 and $24.93 per hour. Their mileage rate ranges between $0.53 and $0.62 per mile. Road Drivers' wages are determined according to seniority. It takes Road Drivers three years to reach the top hourly and mileage rates. They average between $60,000 and $70,000 per year. Road Drivers do not have assigned shifts, but rather have routes which each have assigned start times in the overnight or early morning hours. There is no evidence regarding the number of hours they typically work per week.

The Employer maintains a separate seniority list for Road Drivers. Based on their seniority, Road Drivers bid on runs with varying start times and distances. Road Drivers' bids include a dock work option, which indicates whether dock work is available for a particular bid.

Dockworkers

Dockworkers transport freight across the dock area in order to load it and unload it to and from trailers. Like drivers, dockworkers receive training on how to work the dock and maintain current forklift certifications. Dockworkers use this equipment during the regular course of their duties. According to their job description, Dockworkers also verify documentation to ensure that it matches the freight description and "assist customers with freight and freight documentation as needed." However, there is little record evidence describing the various job duties involved in dock work outside of what is contained in the Dockworker job description, and there was no evidence suggesting that the Supplemental Dockworkers' duties are different in any way from the full-time Dockworkers' duties. Dockworkers perform these duties exclusively at the Terminal. Dock work accounted for the majority of the work hours accrued by dockworkers during the six-month period. None of the Dockworkers performed any city or road driving work during the six-month period.

There are 18 full-time Dockworkers and 10 part-time Supplemental Dockworkers who are certified to perform hostling duties. Eight Dockworkers accrued some hours for hostling work, but only two full-time Dockworkers and one part-time Supplemental Dockworker hostled for more than 300 hours in total over the entire six-month period. Dockworkers hostle using specialized hostling trucks that do not require a CDL.

The only substantive prerequisite for employment as a Dockworker is that the applicant must be at least 18 years of age. The Employer's job description for the position also states that a high school diploma or its equivalent is preferred. Dockworkers are not required to possess a CDL and are not subject to random drug testing.

The 32 part-time Supplemental Dockworkers average about 25 hours per week, and earn between $16.31 and $18.31 per hour. They reach the top rate of pay after one year of

employment. Supplemental Dockworkers average between $25,000 and $30,000 per year. The 20 full-time Dockworkers, ten of whom are driver apprentices in the dock-to-driver bridge program, average about 35 hours a week and earn an hourly rate of $20.13. Full-time Dockworkers average about $37,000 per year.

The Employer maintains a separate seniority list for the full-time Dockworkers but not the Supplemental Dockworkers. Dockworkers are generally assigned to particular shifts upon being hired, though there was no evidence what these shifts are.

Other terms and conditions of employment

City Drivers, Road Drivers, and Dockworkers are eligible for the same health benefits and 401(k) plan. All three classifications also receive four or five days of paid personal time off per year. However, only full-time employees are also eligible for paid vacation leave, which ranges between two and four weeks per year, depending on seniority. Full-time employees are also entitled to seven paid holidays per year. All employees share a break room and are invited to Employer-hosted functions and events. There is no evidence regarding employee interaction in either of these settings.

City Drivers and Road Drivers are required to wear uniforms while performing their driving duties. Dockworkers may order uniforms, but are not required to wear them. Drivers are also not required to wear a uniform while performing dock work or hostling.

B. Supervision

Service Center Manager Martin Underwood is responsible for the overall operation of the Terminal. The twelve Operational Supervisors directly supervise the City Drivers, Road Drivers, and Dockworkers. The Operational Supervisors are regularly assigned to supervise either the dock or dispatch; however, these assignments rotate frequently, even on a daily basis. When assigned to supervise the City and Road Drivers, or to work dispatch, Operational Supervisors work out of the dispatch office. Operational Supervisors supervising the dock generally roam the dock and work out of a separate area on the dock.

The Operational Supervisors can and have disciplined both drivers and Dockworkers in the course of their duties. There was no record evidence as to how many supervisors are present during the various shifts.

C. Contact and Interchange

Dockworkers and drivers are in close contact whenever drivers perform dock work. Drivers are not necessarily assigned to load their own trailers while performing dock work and may be assigned to work alongside Dockworkers to perform the same tasks. There is no significant evidence of contact between drivers and Dockworkers beyond this.

The Employer operates a dock-to-driver bridge program intended to allow Dockworkers to obtain a CDL and transfer to a driver position. Once a Dockworker is accepted into the

program, he or she has one year to complete it. Dockworkers complete the program upon obtaining their CDL. During their enrollment in the program, Dockworkers work on the dock on a full-time basis, and take a five-week skills training course. Once Dockworkers graduate from this program, they are offered a full-time driving position if one is available. 18 out of the approximately 114 drivers are graduates of the dock-to-driver program.

There is no evidence that any drivers have ever transferred to a Dockworker position. There is also no evidence regarding contacts between the Road and City Driver classifications.

D. Functional Integration

Employees in all job classifications work toward the ultimate goal of picking up and delivering freight to and from customers.

E. History of Collective Bargaining

There is no history of collective bargaining at the facility.

IV. ANALYSIS

If the petitioned-for unit consists of a readily identifiable group of employees who share a community of interest, then it will be found appropriate unless there are additional employees with whom these employees share an overwhelming community of interest. *Specialty Healthcare and Rehabilitation Center of Mobile,* supra, slip op. at 10-13. Therefore, the first two threshold questions are whether the Petitioner's proposed bargaining unit of City Drivers and Road Drivers constitutes a readily identifiable group of employees, and whether they share a community of interest.

I find that these questions should be answered affirmatively. The petitioned-for unit is structured along the lines of classification, job function, and skills. The petitioned-for unit is a clearly identifiable group because, among other things, it "tracks a dividing line drawn by the Employer." *Macy's*, 361 NLRB No. 4, slip op. at 12 (2014). Here, although the Employer insists that the Dockworkers and drivers are not part of separate departments, there is no question that the Employer treats the driver classifications differently in almost every operational and administrative sense.

The Employer tracks drivers' work separately from that of the Dockworkers. It also keeps separate seniority lists for each of the driver positions. The drivers also wear uniforms that distinguish them from Dockworkers, who are allowed to perform their job duties in street clothes. As Class A CDL holders, City and Road Drivers are uniquely qualified employees dedicated to the operation of particular equipment. They are engaged in the same unique function, as the only employees who drive freight from place to place. Thus, the City Drivers and Road Drivers are readily identifiable as a group. *Northrop Grumman Shipbuilding,* supra, slip op. at 3.

For similar reasons, I also find that these employees share a community of interest. They are engaged in virtually the same task – moving freight from place to place. They are distinctly qualified and skilled because of their licensure requirements, and use the same type of equipment. As full-time employees, drivers share the same benefits and are similarly compensated. Their working conditions are quite similar as well: the drivers are subject to random drug testing, perform the bulk of their work away from the Terminal, and are able to bid on runs according to seniority. Thus the City Drivers and Road Drivers share a distinct community of interest. *Home Depot USA,* supra at 1290 (CDL license, driving record prerequisite, and drug testing requirements are among factors supporting finding community of interest in driver unit).

Therefore, the burden is on the Employer to show that the Road Drivers and City Drivers share an overwhelming community of interest with the Dockworkers. As the Board has explained, "additional employees share an overwhelming community of interest with the petitioned-for employees only when there 'is no legitimate basis on which to exclude [the] employees from' the larger unit because the traditional community-of-interest factors 'overlap almost completely.'" *Northrop Grumman Shipbuilding,* supra, slip op. at 3, quoting *Specialty Healthcare,* supra, slip op. at 11, and *Blue Man Vegas, LLC v. NLRB,* 529 F. 3rd 417, 421, 422 (D.C. Cir. 2008). The Employer has failed to meet this burden.

The employees in the petitioned-for unit and the Dockworkers possess vastly different skills and perform distinct job functions. Road and City Drivers must possess Class A CDLs with various certifications, and, unlike Dockworkers, are subject to random drug tests because of the nature of their work. Dockworkers are low-skilled employees who do not require any specialized skills beyond the use of a forklift. The nature of the work drivers principally perform also means that they spend the bulk of their time away from the Terminal performing their job duties, while Dockworkers work almost exclusively within the Terminal. Another significant difference between the employees in the petitioned-for unit and the Dockworkers is the disparity in wages. All of the Road and City Drivers are full-time employees earning between $50,000 and $70,000 per year, whereas the Dockworkers average about $37,000 per year.

The Employer primarily points to employee interchange and common supervision as evidence that the drivers and Dockworkers share an overwhelming community of interest. However, the record evidence of interchange is insufficient to demonstrate an overwhelming community of interest. Road and City Drivers generally only perform dock work voluntarily. Even though the Employer can compel drivers to work the dock, it usually acquiesces in the drivers' preferences by staffing part-time Dockworkers to perform that work unless drivers have volunteered to do it. The amount of dock work performed by employees shows that overall, dock work makes up a small fraction of the drivers' duties and that the performance of dock work is largely concentrated among a few employees in the petitioned-for unit. Twelve out of the approximately 114 employees in the petitioned-for unit accounted for approximately 57% of the dock work performed by drivers during the six-month period, and the two driver classifications as a group accounted for approximately 15% of all the dock work performed during the six-month period.

Moreover, there is no evidence that any Dockworkers have ever performed the duties of a driver. Evidence of one-way interchange involving only a limited portion of the drivers' working time is not persuasive evidence that the Dockworkers share a community of interest with the drivers. *DTG Operations, Inc.*, 357 No. 175, slip op. at 7 (2011) (limited, one-way interchange involving a minority of the unit does not require a classification to be added to a petitioned-for unit). The Employer also argues that there is significant interchange based on the 21 permanent transfers into the driver classifications by former Dockworkers. However, "evidence of permanent interchange is a less significant indicator of whether a community of interest exists than is evidence of temporary interchange." *Macy's*, supra, slip op. at 10; citing *Bashas', Inc.*, 337 NLRB 710, 711 fn. 7 (2002). In addition, even the permanent interchange in this case is one-way, as there is no evidence that Road or City Drivers have transferred to the Dockworker classification.

The Employer cites *Levitz Furniture Company of Santa Clara*, 192 NLRB 61 (1971), in support of its argument that the Dockworkers must be included in a unit with the drivers. As noted by the Board in *DTG Operations,* supra, slip op. at 6, fn. 23, the *Levitz* case does not consider "whether the disputed employees share an *overwhelming* community of interest with the unit employees." (emphasis in original) However, even assuming that *Levitz* survives *Specialty Healthcare,* it is readily distinguishable here, as it was in *Macy's*, supra, slip op. at 17-18. The Board in *Levitz* relied heavily on its finding that the truck drivers in that case shared many community of interest factors and had "such regular and frequent interchange" with other employees in the facility that they did not constitute a "clearly identifiable group." Id. at 63. Here, the vast majority of the drivers in the petitioned-for unit have neither regular nor frequent interchange with the Dockworkers, and as I have found, they constitute a readily identifiable group, subject to distinct qualifications and licensure. *Home Depot USA,* supra at 1291.

Similarly, the Employer cites *E. H. Koester Bakery Co., Inc.,* 136 NLRB 1006, 1012 (1962), wherein the Board considered many of the traditional community-of-interest factors to find that the drivers at issue could be excluded from a petitioned-for production and maintenance unit because, among other things, drivers spent the vast majority of their time away from the facility, had distinct working conditions, and had little contact with the petitioned-for employees. Somewhat more recently, the Board has held "[D]rivers may constitute an appropriate unit apart from warehouse and production employees unless they are so integrated with a larger unit that they have lost their separate identity." *Triangle Building Products, Corp.*, 338 NLRB 257, 266 (2002) (citing, among others, *E. H. Koester*). Here, the Petitioner seeks to represent a unit of drivers only, an important consideration absent from other decisions cited by the Employer in support of its argument. See *Calco Plating, Inc.*, 242 NLRB 1364 (1979) (petitioner sought unit of production and maintenance employees); *Transway, Inc.*, 153 NLRB 885 (1965) (petitioner sought a unit of what it characterized as warehousemen). Also, the drivers here are not integrated into the larger unit of Dockworkers. On the contrary, drivers maintain their separate identity, in part, because they spent 89% of their time driving.

Although there are a few areas of commonality between the three classifications, chiefly in common supervision, these areas fall far short of establishing the overwhelming community of interest between the Dockworkers and the employees in the petitioned-for unit that would be necessary to require the Dockworkers' inclusion. See *Rinker Materials*, 294 NLRB 738, 739 fn.

5 (1989) (finding unit of only drivers appropriate despite common supervision with other employees because the two groups performed significantly different functions and possessed different skills).

There is an overwhelming community of interest only where there is no legitimate basis upon which to exclude a classification from the unit because the traditional community-of-interest factors overlap almost completely. *Northrop Grumman Shipbuilding,* supra, slip op. at 3. The Board will find a fractured unit where the petitioned-for unit does not "track any lines, drawn by the employer, such as classification, departmental, or functional lines, and also was not drawn according to any other community of interest factor." *Macy's,* supra, slip op. at 11, citing *Odwalla, Inc.*, 357 NLRB No. 132, slip op. at 4-6 (2011). Here, that is not the case because: (1) Dockworkers and the petitioned-for drivers have distinct classifications, job functions, and skill sets; (2) the groups earn strikingly dissimilar wages; and (3) there is only limited, one-way interchange between the Dockworkers and the employees in the petitioned-for unit. The "mere fact" that the driver classifications may also share a community of interest with the Dockworkers is insufficient to render the smaller petitioned-for unit inappropriate. *Specialty Healthcare*, supra, slip op. at 10.

Therefore, I find that the Road Drivers and City Drivers constitute a readily identifiable group of employees who share a community of interest, and the Dockworkers do not share an overwhelming community of interest with the petitioned-for unit. Accordingly, I find that the petitioned-for unit is appropriate for the purposes of collective bargaining. *Specialty Healthcare,* supra; *Overnite Transportation Co.*, 325 NLRB 612 (1998).

V. CONCLUSIONS AND FINDINGS

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 made at the hearing 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 in this case.

3. The Petitioner is a labor organization which 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 Road Drivers and City Drivers; **excluding** all other employees, Dockworkers, Supplemental Dockworkers, Mechanics, building maintenance employees, office clerical employees, and guards and supervisors as defined in the Act.

VI. 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 the purposes of collective bargaining by **International Brotherhood of Teamsters, Local 701**. 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. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were 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, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are 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 after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date 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 seven (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.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **Tuesday, October 14, 2014.** No extension of time to file this list shall 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 by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at **www.nlrb.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. 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 three (3) copies, unless the list is submitted by facsimile or electronic filing, in which case no copies 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 a minimum of three (3) working days prior to 12:01 a.m. on the date 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 five (5) 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 non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Tuesday, October 21, 2014, at 5:00 p.m. (ET)**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good

cause shown, the Board may grant special permission for a longer period within which to file.[10] A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at **www.nlrb.gov.** Once the website is accessed, click on **File Case Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated: October 7, 2014

/s/ Dennis P. Walsh
DENNIS P. WALSH
Regional Director, Region Four
National Labor Relations Board

[10] A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.