

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**GOLDEN STATE OVERNIGHT DELIVERY
SERVICE, INC.**

Employer

and

Case 31-RC-185685

TEAMSTERS JOINT COUNCIL 42

Petitioner

DECISION AND ORDER

On October 5, 2016, Teamsters Joint Council 42 (Petitioner) filed a petition under Section 9(c) of the National Labor Relations Act (NLRA or Act), seeking an election in a unit of “company drivers,” excluding personally owned vehicle (POV) drivers, employed by Golden State Overnight Delivery Service, Inc. (Employer) at its Sun Valley, California facility. The Employer contends that the unit sought by the Petitioner is inappropriate because POV drivers employed at its Sun Valley, California facility share an overwhelming community of interest with the only other type of drivers the Employer employs, namely company owned vehicle (COV) drivers.

On October 17, 2016, a hearing was held before a Hearing Officer of the National Labor Relations Board. At the hearing, I approved an amendment to the petition to clarify that the Petitioner seeks to represent only company drivers who operate COVs.

The issue presented in this case is whether the petitioned-for unit of COV drivers at the Employer’s Sun Valley, California facility is an appropriate unit for bargaining or whether the unit must also include POV drivers at the Employer’s Sun Valley, California facility. The Petitioner has stated on the record that it does not wish to proceed to an election in an alternative unit if the petitioned-for unit is not found to be appropriate.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. As explained below, based on the record and relevant Board law, I find that the unit sought by Petitioner is inappropriate, and I shall not direct an election in that unit.

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THE PARTIES' POSITIONS

A. The Employer's Position

The Employer contends that the Petitioner has failed in its initial burden to prove that the petitioned-for unit is an appropriate unit. The Employer argues that the COV drivers of the 53-foot tractor-trailers do not share a community of interest with the other COV drivers because of the distinct duties and responsibilities of the tractor-trailer drivers. The 53-foot tractor-trailer drivers perform line hauls, which carry large freight between the Employer's hubs, while other COV drivers deliver to offices and residences. Additionally, the Employer distinguishes the tractor-trailer drivers because they are required to have a special class A license and are compensated with both an hourly wage and per mile rate.

The Employer also argues that POV drivers share an overwhelming community of interest with the petitioned-for unit, requiring the inclusion of POV drivers. The Employer contends that POV and COV drivers are given the same responsibilities for pickups and deliveries, are subject to the same supervisors, receive their routes through the same Routers, interchange with each other when picking up and delivering, receive similar training, work out of the same Sun Valley facility, record their work time using the same method, wear the same uniform, receive similar compensation, and are subject to the same work policies. Because of the large number of similarities in their jobs, the Employer argues that POV drivers share an overwhelming community of interest with COV drivers and should, therefore, be included in the unit.

B. The Petitioner's Position

The Petitioner contends that the petitioned-for unit is appropriate because of the shared community of interest between COV drivers. The Petitioner notes that it is not required to prove the most appropriate unit for bargaining, but merely an appropriate unit, which shares a community of interest. The cornerstone of the Union's position is that all of the drivers in the proposed unit operate COVs, therefore COV drivers' interest are all aligned. In support of this contention, the Petitioner argues that COV drivers all receive the same five days of training, operate under the Employer's insurance, have the same supervisors, have the same work times, wear the same uniform, perform the same types of pickups and deliveries, receive similar compensation, and are subject to the same drug testing policies. Based on the similarities between COV drivers, the Petitioner argues that they are an appropriate unit.

The Petitioner disputes that POV drivers share an overwhelming community of interest with COV drivers, such that the petitioned-for unit must be modified to include them. The Petitioner notes that under *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934, 945 (2011), enfd. 727 F.3d 552 (6th Cir. 2013), the burden is on the Employer to prove an overwhelming community of interest exists and that it failed to do so here. According to the Petitioner, POV drivers operate under a distinct paradigm, which creates a substantially different focus of interest from COV drivers. The Petitioner particularly notes the following facts: POV drivers are required to carry their own insurance and are subject to different drug testing policies;

they are not able to deliver freight; they drive smaller sized vehicles than COV drivers; they have different clock-in procedures; and they have fewer training days.

THE EMPLOYER'S OPERATIONS

A. Background

The Employer operates a 25,000 square foot facility located in Sun Valley, California. The Employer is in the business of picking up and delivering various packages, envelopes, and other freight from customers and transporting the items to its Sun Valley facility for further distribution, or delivering the items to customers located at warehouses, businesses, offices, or residential addresses. The Employer also delivers larger shipments of freight between its Sun Valley facility and its Ontario or Visalia facilities. These larger facilities are referred to as "hubs." The Employer divides the employees into two groups: pickup employees and delivery employees. Employees working during the AM shift start between 6:00 a.m. and 9:00 a.m. and are generally assigned to do deliveries to customers. Employees working during the PM shift start between 11:00 a.m. and 3:00 p.m. and are generally assigned to do pickups from customers. However, any employee on either the AM or PM shift may be assigned to do either a pickup or delivery during their shift, depending on the specific needs of the customer or the workload for that day.

The Employer employs 73 drivers who pickup and/or deliver parcels. Ten of the drivers use COVs and 63 of the drivers use POVs. The COVs include 16-foot bobtail trucks, 24-foot bobtail trucks, and 53-foot tractor-trailers. The POVs range from four door sedans to pickup trucks and cargo vans. The COVs have the company logo on the vehicle. The Employer does not require POVs to display the company logo, but they may display the company logo if the vehicle owner chooses to do so. All drivers are required to have at minimum a class C driver's license. Only those COV drivers who operate the 53-foot tractor-trailers are required to have a class A license. POV drivers do not operate COVs and COV drivers do not operate POVs in the course of performing their duties. It is unclear from the record whether the Employer has distinct classifications for COV and POV drivers.

The Employer's hierarchy at its Sun Valley facility is as follows: Mark Seymour is the Operations Manager; Luis Meza is the AM Delivery Service Manager; Michael Velasquez is the PM Pickup Service Manager; and there are three Routers who assign daily pickup and delivery assignments to both POV and COV drivers. Both POV and COV drivers are eligible for promotion to a Router or Driver Trainer position. The Employer maintains service commitment times of 8:00 a.m., 10:30 a.m., 12:00 p.m., 2:30 p.m., and 5:00 p.m. such that packages are picked up from or delivered to customers at that time. Routers are tasked with ensuring the driver routes allow the drivers to fulfill those service commitment times. Delivery route assignments are typically made prior to the start of the AM delivery shift by the Routers.

B. The Drivers

1. POV and COV Drivers

All drivers begin their shifts at the Employer's Sun Valley facility and they are required to sign in when they begin their shift. Both POV and COV drivers record their time using the same sign-in process, which differs depending on whether they are delivery or pickup drivers. When delivery POV and COV drivers arrive to work, they use a scanner to record their sign-in time and also fill out a paper sheet, which a supervisor initials. When pickup POV and COV drivers arrive to work, they simply fill out a timesheet to record their sign-in time, which a supervisor initials. Drivers use the same process for clocking out as they do for clocking in.¹

Either COV or POV drivers can be assigned to deliver packages to or pick up packages from customers. However, because POV drivers drive smaller vehicles, a particularly large freight pickup or delivery must be handled by a COV driver. There is no other difference in the type of packages that the POV and COV drivers pick up or deliver. All packages are loaded into the COV or POV by warehouse employees. Both COV drivers and POV drivers can receive the same routes, and route assignments are made based on volume, demand, and size of the package. If a COV or POV driver is unable to meet the Employer's scheduled customer service time, the Routers can assign another COV or POV driver to the customer. In other words, in order to meet a customer's service time, the Employer can replace the assigned COV driver with a POV driver or replace the assigned POV driver with a COV driver to accomplish the pick up or delivery. POV drivers are required to interact with customers at delivery or pickup sites. Likewise, COV drivers, with the exception of maybe one or two of the 53-foot tractor-trailer drivers, also interact with customers at delivery or pickup sites. Only one POV or COV driver is assigned to each pickup or delivery, requiring the employee to deliver or pick-up the package alone. Thus, when out on their scheduled routes, POV drivers and COV drivers do not interact with each other. However, POV and COV drivers have daily contact with each other because they report to and start work out of the same Sun Valley facility.

COV and POV delivery drivers are compensated either with an hourly rate of pay or an incentive-based rate of pay that is based on the number of parcels they deliver during their shift.² COV and POV PM drivers who perform the pickup function do not appear to receive incentive pay and are simply paid an hourly rate. The wages for a COV or POV driver range from about \$14 per hour to \$22 per hour. The minimum that any driver can receive is minimum wage. In

¹ A COV driver testified that he has never used a scanner to sign-in, that he has not seen other COV drivers use a scanner to sign-in, and that in the past he only used a timesheet to record his time. He also testified that more recently he has started using a "little machine" to "punch in." It is unclear from the record whether this employee is a delivery or pickup driver. However, the list of employees attached to the Employer's statement of position, which was admitted into the record, does list the employee as a PM shift driver, which is generally the pick-up shift.

² Although a COV driver testified that he is only paid an hourly wage and that eight of the other COV drivers are also only paid an hourly wage, his testimony regarding other COV drivers' compensation is based on hearsay and – as noted above – it is unclear from the record whether the driver who testified is a delivery or pickup driver.

addition to receiving an hourly wage, POV drivers also receive a mileage reimbursement of 54.5 cents per mile for the miles they drive during working time. The Employer withholds taxes and payroll deductions from the paychecks of both COV and POV drivers. The POVs are owned by the employee and the employee is responsible for maintaining and insuring the vehicle. COVs are maintained by the Employer at the on-site maintenance facility and insured by the Employer. COV drivers are required to bring the vehicles to the Employer facility for maintenance at the end of their shift. POV drivers do not have the same maintenance requirements. The record is unclear what, if any, maintenance POV drivers must perform on their vehicles.

All potential new employees are required to present an H6 printout from the DMV prior to being hired; although the record references driving background in relation to the H6 printout, it is unclear what an H6 printout shows. For COV positions, the Employer also asks whether the potential employee has any experience driving a 16, 24, or 53-foot tractor-trailer; the Employer seeks to recruit COV drivers who have experience driving these types of trucks. After being hired, new COV drivers are given a five-day training course. The first day consists of in-classroom instruction watching educational videos about the operation of the COV. The next four days are spent doing on-the-road training. New POV drivers are given three days of training. All three days involve on-the-road training. The on-the-road training for POV and COV drivers is designed to teach new employees about the routes they will be working and how to handle package pickup or delivery. POV drivers are given less training because they are presumed to know how to operate their own vehicle. POV drivers are not trained on how to operate COVs.

POV drivers are required to carry their own insurance on their vehicles. COV drivers are covered under the Employer's insurance plan. No information was provided about the requirements for POV drivers' insurance. COV drivers, who are covered by the Employer's insurance plan, are subject to random drug testing. They also are required to take a drug test if they are involved in an accident while driving the COV and may be subject to termination based on the driving accident. POV drivers are not subject to random drug testing; it is unclear whether they are required to submit to a drug test if they are involved in an accident during work time.

All employees are given an employee handbook when they are hired, which governs both COV and POV drivers. The handbook encompasses the following: Employer policies, including discrimination and harassment policies; work rules; attendance policies; medical and other leave; and benefits. COV and POV drivers are all eligible for 401k contributions, health insurance, and leave. All COV and POV drivers are required to wear similar employer-provided uniforms. They all wear a forest green shirt with the Employer logo on the front. However, COV drivers are required to wear gray pants and POV drivers are required to wear khaki pants.

2. COV Tractor-Trailer Operators

There are approximately three COV drivers who operate a 53-foot tractor-trailer and haul large freight shipments between hub locations or large delivery destinations. The Employer refers to these runs as "line hauls." All 53-foot tractor-trailer drivers operate out of the Sun Valley facility and all 53-foot tractor-trailers are COVs. No POV drivers operate 53-foot tractor-

trailers at the Sun Valley facility. In order to operate a 53-foot tractor-trailer, drivers are required to have a class A license. After arriving at a destination facility, the tractor-trailer driver drops off the trailer and receives a different one to return to the Sun Valley facility. This process does not require tractor-trailer drivers to interact with customers and does not involve deliveries to residences or businesses. However, one or two of the tractor-trailer operators do interact with customers performing other deliveries or pick-ups. Before beginning a line haul, the tractor-trailer operators have the freight loaded onto the trucks by warehouse employees. During line hauls, tractor-trailer drivers are subject to inspection and weighing by Highway Patrol when traveling between hub destinations. Tractor-trailer operators are under the same supervision as other COV and POV drivers. Tractor-trailer drivers are subject to the same employee rules and policies as other drivers and they wear the same uniform as other COV drivers. It appears that although two of the three tractor-trailer operators are compensated in the same way as other POV and COV drivers, an hourly rate or an incentive-based rate of pay, the third tractor-trailer operator, who drives to Visalia, might receive a per-mile compensation in addition to his hourly compensation.

DISCUSSION

A. The Employees in the Petitioned-For Unit are Readily Identifiable as a Group and They Share a Community of Interest.

The Act does not require a petitioner to seek representation of employees in the most appropriate unit but only in an appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996) [emphasis added]. In determining an appropriate unit, the Board first considers the petitioned-for unit. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). In order to find that a petitioned-for unit is appropriate, the petitioner must satisfy two requirements. First, the petitioner must demonstrate that the group of employees “are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills, or similar factors)” and second “that the employees in the group share a community of interest.” *Macy’s Inc.*, 361 NLRB No. 4, slip op. at 9 (2014) (quoting *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934, 945 (2011), *enfd.* 727 F.3d 552 (6th Cir. 2013)).

The Board considers a number of factors in determining whether a given group of employees shares a sufficient community of interest to constitute an appropriate unit, including: similarity in the scale and manner of determining wages; similarity in employment benefits, hours of work, and other terms and conditions of employment; similarity in the qualifications, skills and training of employees; frequency of contact and interchange among employees; geographic proximity; common supervision; functional integration; and history of collective bargaining. *Overnite*, 322 NLRB at 724; *United Operations, Inc.*, 338 NLRB 123 (2002); *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962) (each unit determination must have a direct relevancy to the circumstances within which the collective bargaining is to take place); *see also Specialty Healthcare*, 357 NLRB at 942. Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, 256 NLRB 1069, 1069, fn. 5 (1981). However, all

relevant factors must be weighed in determining community of interest. When making a determination as to whether a petitioned-for unit is “appropriate” under Section 9(b) of the Act, “the Board’s discretion in this area is broad, reflecting Congress’ recognition ‘of the need for flexibility in shaping the [bargaining] unit to the particular case.’” *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985) (quoting *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 134 (1944)).

The petitioned-for unit in this case is a readily identifiable group of employees. COV drivers are all non-supervisory employees of the Employer who work as delivery or pickup drivers. Although it is unclear whether the Employer maintains separate classifications for COV and POV drivers, COV drivers are easily distinguished from other drivers as they are the only employees of the Employer who drive company owned vehicles. I therefore find that the petitioned-for unit is a readily identifiable group.

In addition, traditional community of interest factors weigh in favor of finding the petitioned-for unit appropriate. COV drivers all work out of the same Sun Valley facility where they have daily contact at the start of their shifts as they wait for their freight to be loaded. They have similar duties and functions. They also share the same supervision and receive the same five days of training. They also share similar hours of work, which vary depending on whether they are on the AM or PM shift. I do note that they do not all receive the same type of compensation in that some COV drivers receive an incentive compensation and others receive only an hourly wage. However, they are all eligible for the same 401k and health insurance plans and are subject to the same Employer handbook, which provides for similar leave policies and other benefits. All COV drivers have the same drug testing requirements, are subject to termination based on a driving accident, and wear the same uniforms. Finally, although as discussed below, the COV tractor-trailer drivers are required to possess a class A license, all COV drivers share similar qualifications and skills, as the Employer looks for previous experience in driving large trucks during the hiring process.

Contrary to the Employer’s position, I conclude that COV tractor-trailer operators also share a community of interest with the other COV drivers. The COV tractor-trailer operators work out of the same facility as the other COV drivers and they wear the same uniform, receive the same benefits (including 401k and health insurance), and are subject to the same work rules. They also are subject to the same supervision. I do note that unlike the other COV drivers, the tractor-trailer drivers are required to possess a class A license and one tractor-trailer driver receives a per mile rate in addition to his hourly wage. While special licensing requirements are necessary to operate a tractor trailer, all COV drivers are asked about their previous experience driving large trucks and receive the same five-day training course, regardless of the type of truck driven. Thus, although there are some differences in the licensing requirement and compensation as to one employee, I do not find that these facts negate the community of interest between the tractor-trailer COV drivers and the other COV drivers. Because the tractor trailer drivers share a community of interest with the other COV drivers, I find that their inclusion in the petitioned-for unit is appropriate.

Accordingly, I conclude that the employees in the petitioned-for unit are readily identifiable as a group and share a community of interest for the purposes of collective bargaining.

B. The Employer Has Met Its Burden of Demonstrating the Existence of an Overwhelming Community of Interest Between the Employees Sought by the Petitioner and Other Employees the Petitioner Seeks to Exclude.

When the Board determines that the unit sought by a petitioner is readily identifiable as a group and employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the unit employees could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates “that employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit.” [Emphasis added]. *Specialty Healthcare*, 357 NLRB at 945-46. 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. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB 2015, 2017 (2011); *Blue Man Vegas, LLC v. NLR*, 529 F.3d 417, 421-22 (D.C. Cir. 2008). Moreover, the burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Specialty Healthcare*, 357 NLRB at 945-46, fn. 28.

I conclude that the employees the Employer seeks to add to the unit share an overwhelming community of interest warranting their inclusion with the employees sought by the Petitioner. In reaching this conclusion, I find that POV drivers at the Sun Valley, California facility work jointly with COV drivers to perform the similar duties of picking up and delivering packages. There is functional integration in that generally the PM COV and POV drivers are involved in the pickup of packages and the AM COV and POV drivers are involved in the delivery of packages to the Employer’s customers. With the exception of the COVs who drive tractor-trailers, they have similar qualifications. Moreover, they have the same supervision, are subject to the same Employer rules and policies, receive similar pay and the same benefits. See *Odwalla, Inc.*, 357 NLRB 1608 (2011) (the Board declines to approve fractured units, such as combinations of employees that have no rational basis for excluding some employees, but not others).

1. Similarity of Duties, Functions, Qualifications, Skills, and Training

Both COV and POV drivers perform the same basic duties and functions of picking up and delivering parcels from and to the Employer’s customers. However, because POV drivers have smaller vehicles, a particularly large freight pickup or delivery must be handled by a COV driver. There is no other difference in the type of packages that the POV and COV drivers deliver. All packages are loaded into the COV or POV by warehouse employees. At pickup or delivery locations, POV drivers are required to interact with customers as are all COV drivers, except for one or two COV tractor-trailer drivers. Thus, the POV drivers, who the Petitioner seeks to exclude, share the expectation of having interactions with customers, while the COV

tractor-trailer drivers, who the Petitioner seeks to include, do not. COV and POV drivers are all working towards the same goal of package pickup and delivery and are assigned routes in the same manner. Although it is unclear from the record whether the Employer has distinct classifications for COV and POV drivers, it is clear that COV and POV drivers form part of the same parcel delivery and pickup operation and that the Employer treats them as a single functional group. *See The Neiman Marcus Group Inc.*, 361 NLRB No. 11, slip op at 4 (2014) (where the “boundaries of the petitioned-for unit do not resemble any administrative or operational lines drawn by the Employer,” such that the petitioner has carved out a unit from within an operational division, the factor does not support finding the smaller carved out unit appropriate); *Odwalla, Inc.*, 357 NLRB at 1612 (where the “recommended unit does not track any lines drawn by the Employer, such as classification, department, or function,” this factor supports finding an overwhelming community of interest in the larger inclusive unit).

With respect to qualifications, all drivers, except the 53-foot COV tractor-trailer operators, are expected to have a class C license prior to being hired; the 53-foot COV tractor-trailer operators must possess a class A license. Thus, the COV tractor-trailer operators, who the Petitioner seeks to include in the unit, have a licensing requirement that exceeds the requirement for the POV drivers whom the Petitioner seeks to exclude. In addition, to the extent that POV drivers’ skills may be slightly different, they are more similar to the skills of the 16-foot and 24-foot bobtail truck COV drivers than the skills of these COV drivers are to the skills of the 53-foot tractor-trailer COV drivers. This is so because the POV and 16-foot and 24-foot bobtail truck COV drivers essentially drive significantly smaller vehicles than the 53-foot tractor-trailer COV drivers. Accordingly, based on skill, there is no reason to exclude POV drivers from the unit while including the 53-foot tractor-trailer COV drivers with the other COV drivers. *Odwalla, Inc.*, 357 NLRB at 1613 (finding no basis to exclude one classification of employees, merchandisers, when they had more in common with RSRs and swing reps included in the unit than RSRs and swing reps had with other classifications also included in the unit).

Although COV drivers receive specific training on the operation of COVs, all drivers receive the same on-the-road training to familiarize them with the routes they will be assigned and how to handle customer pickups and deliveries. *See A.S.V. Inc.*, 360 NLRB No. 138, slip op. at 1, fn. 1 (2014) (Board denied the employer’s request for review and, in so doing, stated that the Regional Director’s analysis properly determined the appropriate unit applying *Specialty Healthcare*, which included a finding that where similar skills and education are required for hiring, the skill factor weighs in favor of an overwhelming community of interest, even when on the job training is required for unique equipment and tools).

2. Contact and Interchange Between COV and POV Drivers

POV and COV drivers have daily contact with each other because they work out of the same Sun Valley facility. All COV and POV drivers are required to report to the Sun Valley facility at the start of their shift in order to receive their routes for the day and have the packages loaded onto their vehicles. All drivers are also required to return to the Sun Valley location at the end of their shift to clock out. The fact that POV and COV drivers do not directly interact while out on their routes is merely the nature of the industry in which the Employer operates and, thus,

does not necessarily weigh against finding an overwhelming community of interest. See *Odwalla, Inc.*, 357 NLRB at 1613 (finding that the significance of the absence of contact at a work location between employees that the petitioner did not want included in the unit from unit employees is “sharply reduce[d]” when considering context, namely that the some of the proposed unit employees also had minimal contact with other unit employees). As in *Odwalla, Inc.*, POV drivers here do not have any less contact with COV drivers than COV drivers have with one another.

POV drivers do not become COV drivers or vice versa. However, there is significant interchange with respect to a particular assignment in that on a daily basis a POV driver may be asked to complete a COV driver’s assignment and vice versa. Also, if a POV driver realizes a parcel is too large for the POV vehicle, a COV driver will be called upon to accomplish the pickup.

3. Degree of Functional Integration Between COV and POV Drivers

Functional integration between COV and POV drivers exists as both groups are responsible for pickup from and delivery to the Employer’s customers. All drivers are responsible for picking up packages from customers and/or delivering packages to customers. Generally, certain COV and POV drivers are assigned to accomplish the pickups and other COV and POV drivers are assigned to accomplish the deliveries. Both COV drivers and POV drivers may service the same customers. Route assignments are made based on volume, demand, and size of the package. Furthermore, as noted above, unless the items being picked up or delivered are too large for a POV, the COV and POV drivers are interchangeable in the course of picking up and delivering packages. If either a POV or COV driver is unable to make one the Employer’s scheduled service time, another COV or POV driver can step in to fulfill the customer’s needs. In this regard, POV drivers as just as functionally integrated with COV drivers as COV drivers are functionally integrated amongst themselves.

4. Similarity of Supervision Between COV and POV Drivers

The supervision of COV and POV drivers is identical. The AM Manager supervises both the AM COV and POV drivers and the PM Manager supervises both the COV and POV drivers. All COV and POV drivers receive their daily assignments from the same Routers.

5. Similarities in Wages, Hours, and other Terms and Conditions of Employment

All employees are covered by the same policies and rules. When first hired, each employee is given a handbook that details the Employer’s work rules and policies. Thus, POV and COV drivers are all subject to the same Employer policies, including those governing issues such as discrimination and attendance. They also are subject to the same medical leave and other leave policies; workplace rules, including attendance rules; and benefits. Both COV and POV drivers wear similar uniforms with the same forest green shirt, although there is some difference in the color of their pants. In addition, the hours of work are similar between COV and POV

drivers. Both groups are assigned to either a morning or afternoon shift. The AM drivers are generally assigned deliveries and the PM drivers are generally assigned pickups.

With respect to wages and compensation, POV and COV drivers are not paid differently based on their position as POV or COV drivers. Rather, both groups earn either an hourly wage or an incentive-based wage. Whether they earn an hourly wage or an incentive-based wage appears to be related to whether they are considered to be pickup or delivery drivers, and not on whether they are POV or COV drivers. In addition, both groups are eligible for the same 401k contributions, health insurance, and leave. The Employer also makes the necessary deductions from both groups' paychecks. *See Odwalla, Inc.*, 357 NLRB at 1612 (where the petitioned for unit is not drawn in accordance with distinct methods of compensation, it indicates that the unit is fractured). Moreover, although POV employees are given a mileage reimbursement of 54.5 cents per mile driven, which COV drivers do not receive, the mileage reimbursement is not considered an additional wage, but merely subsidizes POV drivers' costs for insurance, maintenance, and fuel. In contrast to other COV drivers, one COV tractor-trailer driver, who the Petitioner seeks to include in the unit, receives a per mile compensation in addition to an hourly wage. Thus, the significance of the fact that POV drivers receive a mileage reimbursement is lessened by the fact that a COV tractor-trailer driver, who the Petitioner seeks to include in the unit, receives per mile compensation in addition to an hourly rate. *See Id.* (finding that the similarity in compensation between merchandisers, the classification at issue, and other classifications in the bargaining unit – even if the merchandisers' compensation was different than that of other classifications in the unit – supports inclusion of the merchandisers in the bargaining unit); *see also A.S.V. Inc.*, 360 NLRB No. 138, slip op. at 1 (the Board denied the employer's request for review and, in so doing, stated that the Regional Director's analysis properly determined the appropriate unit applying *Specialty Healthcare*, which included finding evidence of a fractured unit where there were no unique benefits, working conditions, or wages between the groups).

6. Bargaining History of the Parties

This is the initial petition for election for the employees working at the Sun Valley, California location of the Employer. As such, there is no relevant bargaining history between the parties.

With respect to the above factors, I recognize that that there are distinctions between COV and POV drivers with respect to drug testing, size of packages handled, vehicle insurance requirements, ownership of the vehicle, and mileage reimbursement. However, these differences are overshadowed by the overwhelming community of interest they share as evidenced by the following facts: COV and POV drivers perform similar duties and functions – they all pickup and deliver parcels; they have similar qualifications, skills and training; COV and POV drivers are interchanged with respect to the completion of particular pickups or deliveries on a daily basis when necessary to meet time commitments; there is functional integration in that they are all involved in the pickup and then delivery of parcels; they share the exact same supervision; and they have similar wages and methods of compensation, receive the same benefits, work out of the same facility, and are generally subject to the same rules and policies.

Therefore, based on the foregoing, I find that the petitioned-for unit constitutes a fractured unit because POV drivers share an overwhelming community of interest with COV drivers which requires their inclusion in the unit.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth 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 Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. The petitioned-for unit of COV drivers constitutes a readily identifiable group of employees who share a community of interest. However, the Employer has met its burden of establishing that POV drivers share an overwhelming community of interest with the COV drivers.

ORDER

Accordingly, because the Petitioner has stated that it does not wish to proceed to an election in a unit including POV drivers, IT IS HEREBY ORDERED that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **November 18, 2016**.

³ The Employer, Golden State Overnight Delivery Service, Inc., a California corporation with its primary place of business in Pleasanton, California, is engaged in overnight delivery and pickup services. In conducting its operations in the last 12 months, a representative period, the Employer has provided services valued in excess of \$50,000 directly to customers located outside the state of California. During the same time period, the Employer's gross revenue exceeded \$500,000.

Golden State Overnight Delivery Service, Inc.
Case 31-RC-185685

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: November 4, 2016



MORI RUBIN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 31
11500 W Olympic Blvd Ste 600
Los Angeles, CA 90064-1753