UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

OLD DOMINION FREIGHT LINE, INC.

Employer

and **Case 32-RC-214346**

GENERAL TEAMSTERS LOCAL 439, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent a unit of drivers at the Employer's facility in Lathrop, California. The Employer contends that the only appropriate unit is a wall-to-wall unit of all of its non-supervisory employees, or, in the alternative, a unit consisting of all full-time and regular part-time drivers and dockworkers.

A hearing officer of the Board held a hearing in this matter and the parties filed post-hearing briefs, which I have duly considered. As explained below, based on the record evidence and the relevant Board law I have concluded that the petitioned-for unit is an appropriate unit, and I shall direct an election therein.[1]

OVERVIEW OF THE EMPLOYER'S OPERATIONS

Old Dominion Freight Line, Inc., (the Employer) operates a nationwide trucking company that specializes in "less-than-truckload" shipments wherein shipments for various customers are aggregated onto single trailers. The facility involved in this proceeding is located in Lathrop, California. From the Lathrop facility, the Employer provides long-distance terminal-to-terminal service through its line haul routes and also provides pickup and delivery ("P&D") service to customers located in the Stockton, California, area. The Lathrop facility is a cross-dock facility, meaning that the Employer operates shipping and receiving doors out of the same terminal.

The highest ranking manager at the Lathrop facility is Terminal Manager Brian Durbin. Beneath Durbin are six operations managers, including four dock supervisors and two dispatch supervisors. The dock supervisors are responsible for managing the transport of freight in and

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[1] During the hearing in this matter I determined that the Employer's seven clerks, including the classifications of customer service clerk, OS&D clerk, driver check-in clerk, and service appointment clerk, would be permitted to vote subject to challenge in the event that I directed an election in the larger unit sought by the Employer because the votes of the clerks would be unlikely to affect the outcome of the election. Accordingly, my decision herein addresses the community of interest between the Employer's drivers and dockworkers.

out of the terminal and for determining how to most efficiently group the shipments together. The dispatch supervisors are responsible for monitoring the location and status of the drivers and assigning pickups to the drivers. As discussed more fully below, the record reflects that with some overlap, dock supervisors primarily supervise the dockworkers and dispatch supervisors primarily supervise the drivers. About 74 employees work at the Lathrop facility, including about 28 P&D drivers, 7 line haul drivers, 22 dockworkers, 7 clerks, and one sales employee.

BOARD LAW

In *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), the Board overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), and clarified its standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining when the employer contends that the smallest appropriate unit must include additional employees. In *PCC Structurals,* the Board stated that the community of interest test requires the Board in each case to determine:

> whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id., slip op. at 11, quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002). The Board further stated that in weighing the shared and distinct interests of petitioned-for and excluded employees, it must determine whether excluded employees have meaningfully distinct interests that outweigh similarities with unit members. *Id.*, internal citations omitted.

FACTS[2]

All of the Employer's employees are paid on a weekly basis, and all of its full-time employees share common benefits including medical and dental benefits, flexible spending accounts, disability and life insurance, and retirement benefits. Dockworkers and P&D drivers are paid on an hourly basis. The pay range for dockworkers is from $18 to $25 per hour, and the pay range for P&D drivers is from $23 to $29 per hour. Line drivers are paid by the mile while they are driving and receive an hourly wage for time spent at the terminal. Dockworkers receive overtime pay, but drivers are exempt from state overtime laws.

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[2] The facts herein are based on a composite of the record testimony, of which I have accorded the greatest weight to the testimony of the drivers and dockworkers that perform the work in question. During the hearing in this matter the Employer presented a significant amount of evidence regarding its reputation for delivering freight on time and with a low rate of damage, which the Employer contended was relevant to establish that its employees work together. I do not rely on that speculative evidence to evaluate the community of interest between dockworkers and drivers, but rely instead on the testimony of employees regarding their day to day functions.

The only hiring requirement for dockworkers is that they be at least 18 years of age. Dockworkers receive on the job training and certification to operate forklifts. Drivers are required to be at least 22 years of age to be hired and they must possess a Class A Commercial Driver's License with endorsements for hazardous materials and double and triple trailers. Drivers have additional requirements imposed pursuant to Department of Transportation (DOT) regulations, including background checks, drug testing, and regular medical examinations. Drivers are also required to comply with DOT regulations while they are on the job such as weight distribution requirements and following the proper protocol for shipments containing hazardous materials. If drivers are carrying hazardous materials in their trailers then they must ensure that they are carrying the proper paperwork, that the freight is properly labeled, and that their trailer has a hazardous materials placard.

Dockworkers and drivers punch in using the same time clock. Dockworkers take their breaks and lunch periods at the facility, while drivers take their breaks and lunch periods on the road. Dockworkers are instructed when to take their lunch breaks by a dock supervisor, and drivers self-schedule their breaks and lunch periods. P&D drivers are required to wear uniforms, but line haul drivers and dockworkers are not. All drivers are given a uniform allowance, but dockworkers are not.

There is no record evidence that dockworkers and drivers attend trainings or other meetings together. P&D drivers attend monthly safety meetings, but because of their varying schedules those meetings are frequently done on a one-on-one basis. Line haul drivers do not attend regular safety meetings.

The Employer runs its day-to-day operations utilizing a central software system known as the AS400. The AS400 generates manifest paperwork containing data including the number of stops to be made on a route, a suggested order for the stops, and a suggested schematic for the most efficient positioning of freight within the trailers. Both dockworkers and drivers use handheld computers known as the "dock yard management system" (DYMS) to scan freight. Dockworkers use the DYMS to determine whether the freight that they have unloaded needs to be loaded onto another trailer for local delivery or whether the freight will be sent to another terminal. Drivers use the DYMS to retrieve shipping information for their freight and to scan freight during pickups. In addition to the DYMS, drivers also use another piece of equipment known as the BLU, on which drivers log their activity including their break times and lunch times.

The individual functions of dockworkers, combo drivers, line haul drivers, and P&D drivers are discussed in more detail below.

Dockworkers

Dockworkers are responsible for loading and unloading freight to and from trailers, securing and strapping freight in the trailers, transporting freight along the dock, organizing,

restacking, and palletizing freight, and organizing equipment in the yard. Dockworkers also perform pre-trip inspections on any trailers that they pull up to a door to be loaded to make sure that they are roadworthy, meaning the tires and turn signals are in working order. Dockworkers begin their shift by doing a pre-trip inspection on whatever piece of equipment they will be using that day, which could be a pallet jack, a forklift, or occasionally a yard tractor. Dockworkers then report to a dock supervisor to request their tasks. For example, if a dockworker is working a forklift, then they would be given a load sheet that indicates which shipments need to be loaded onto which trailers. If a dockworker is working on a yard tractor, or "hostling," then they would be given a list of the dock doors that need trailers transported to them or hauled away. The Employer currently has four dockworkers who know how to operate a yard tractor.

Outbound Dock Supervisor Connor Welch testified that 6 dockworkers report to him during the evening shift and that the other 16 dockworkers are staggered throughout the day. As explained below, the extent to which the drivers interact with the dockworkers and help to load their own trailers varies from driver to driver. Daytime Dispatch Supervisor Kristin Keech testified that she witnesses drivers interacting with dockworkers on a daily basis to help load and strap their freight. Keech testified that in the last year she has seen all of the drivers involved in the loading of their trailers once or twice, but she also testified that the trailers for line haul drivers are supposed to be mostly loaded by the time they arrive and that she has mostly seen the line haul drivers strapping their freight.

Dockworker Ceasar Rodriguez testified that the goal is to have the trailers loaded and ready by the time that the drivers arrive, but that is not always the case. Rodriguez testified that he interacts with drivers every day and that he regularly sees drivers rearranging, strapping, and securing their own freight. Rodriguez further explained that combo drivers load their own freight while full-time drivers generally only help to rearrange their freight. Rodriguez estimated that on a given day he might see one to three drivers loading freight onto a trailer. Rodriguez recalled seeing three or four drivers using a forklift during the month before the hearing.

Combo Drivers

The Employer maintains a "dock-to-driver" program for training its dockworkers that want to be promoted into driver positions. Candidates for the program are selected by the Employer after screening by the Employer's Human Resources Department and Terminal Manager Durbin. Under the dock-to-driver program dockworkers complete the Employer's driving school, which lasts about a week, and then undergo ride-along training with the drivers. After completion of the training period the dockworker must be certified to drive by the Employer's safety committee and become certified by the DOT. Once those steps have been completed, the employee works as a "combo driver" who may be assigned to perform driving duties or dockwork as needed until a full-time driving position becomes available. The Employer currently has five combo drivers.[3] There are currently two dockworkers in the dock-

[3] The five combo drivers, Joshua Gordon, Tanner Murphy, Manpreet Singh, Jose Palacios, and Jose Medina Franco, are included in the list of employees in the petitioned-for unit that was furnished by the Employer with its Statement of Position.

to-driver program. About 10 of the Employer's current drivers are former dockworkers who were promoted through the program.

P&D Drivers

About 28 P&D drivers work at the Lathrop facility. P&D drivers transport freight to and from customers in the Stockton, California, area. The P&D drivers make, on average, 15 to 20 deliveries and 10 pickups per day and spend about 90 percent of their time away from the facility. P&D drivers have varied starting times but most have already started their shifts by 11 a.m. when Dispatch Supervisor Keech arrives. Keech testified that she considers herself to be the direct supervisor of the P&D drivers, and that dockworkers are primarily supervised by dock supervisors. Both Keech and Dock Supervisor Welch also testified, however, that any operations manager can give instructions to dockworkers and drivers as needed.

When P&D drivers make freight deliveries the drivers sometimes offload the freight shipments for customers using a manual pallet jack and sometimes customers offload their own freight or utilize a third party to unload the freight. For example, if a customer operates a food dock then the driver may not be allowed to access the dock. Once the delivery has been made the driver gives the customer any paperwork that is needed and the customer signs to confirm receipt of the shipment on the driver's handheld computer.

P&D drivers are assigned freight pickups during their shifts by dispatch supervisors, who send notifications to the drivers on their handheld computers. It is the responsibility of the drivers to determine the order of the pickups to ensure that each pickup can be completed. When a P&D driver arrives at a customer's facility for a freight pickup, the driver verifies the piece count and scans the freight with a handheld computer. If a pickup involves hazardous materials then the driver must ensure that the shipment is properly labeled and that the customer has completed paperwork disclosing the contents of the shipment. Sometimes the drivers load the freight shipments onto their trailers and sometimes customers load their own shipments. Occasionally, P&D drivers pick up fully-loaded trailers.

P&D driver Max Ryan testified that he begins his shift by clocking in and reporting to a dispatch supervisor to obtain his truck and trailer assignment. Ryan testified that he regards the dispatch supervisors as his front-line supervisors and that he communicates with them daily regarding any problems that arise during his shift. After obtaining his trailer assignment, Ryan reports to the dock supervisor to get his manifest paperwork and discuss any changes that need to be made. For example, a customer may need to be seen earlier in the day than they have been routed on the manifest. Ryan testified that he then heads to his trailer and assists dockworkers to load and strap down freight in his trailer. Ryan testified that he uses a forklift or a pallet jack to assist with the loading of his trailer every day, and that he regularly sees other drivers doing the same. Ryan testified that sometimes his trailer is pre-loaded, but he may still need to rearrange freight and reorganize the trailer. Ryan explained that during the loading process he and the dockworker are interacting to discuss the order in which the freight will be loaded, verifying piece counts and noting any damages to freight, checking tracking numbers and labels on pallets to verify that customer information is correct, and making sure that freight is correctly strapped

down. Ryan testified that once all the freight is loaded and strapped down, the dock supervisor makes a final check of the shipments on the trailer and closes the route so it can be downloaded onto his hand-held computer. Ryan also conducts a pre-trip inspection of his tractor and trailer, which takes about 20 minutes. Ryan testified that at the end of the shift he parks his trailer in the door assigned by the dock supervisor and notifies the dock supervisor if there are any special circumstances involving his freight, such as a guaranteed shipment or a hazardous materials shipment that requires placards. He then checks in with a dispatch supervisor and turns in his paperwork, and either starts the process again or clocks out for the day. Ryan estimated that he spends about 1 hour and 20 minutes each day at the dock.

Driver Michael Tucker, who currently works as a line haul driver but who worked as a P&D driver until about 6 months before the hearing in this matter, testified that after clocking in and getting his trailer assignment he would hook up to his trailer and complete a pre-trip inspection of his equipment. Tucker testified that at times his trailer was already loaded when he arrived for his shift and at times it was still being loaded, but there was never an occasion when he would get on a forklift and load the trailer himself. Tucker testified that, to the contrary, drivers were discouraged from hanging around the dock while dockworkers were loading their trailers because it would slow down the dockworkers. Tucker testified that he typically only spent about 10 to 20 minutes on the dock and that he would spend the rest of his time at the facility in the break room or on his truck. Tucker testified that as a general rule, he was supposed to be out of the yard within 20 minutes of clocking in, or 35 minutes if he had a double trailer, although it would typically take longer than that.

P&D Driver John Beard testified that he is a "heavy-duty" P&D driver, meaning that he delivers mostly bulk deliveries and deliveries to warehouses. According to Beard, the trailers for heavy-duty drivers are generally pre-loaded. About 12 of the 28 P&D drivers at the Lathrop facility are assigned heavy-duty routes. Beard testified that after he clocks in he obtains and reviews his paperwork, including his manifest, bills of lading, and hazardous materials paperwork. Beard testified that he next makes sure that his trailer is placarded if he has any hazardous materials deliveries to make, and he then conducts a pre-trip inspection of his equipment and enters it into his BLU. Beard testified that his trailer is ready to go about 90 percent of the time by the time he has completed his pre-trip inspection. According to Beard, the trailers he picks up in the morning are typically pre-loaded and pre-sealed by the time he arrives. Beard corroborated Tucker's testimony that the Employer has a policy that drivers should be leaving the gate within 20 minutes of clocking in for single trailers or within 35 minutes for double-trailers. Beard testified that he is usually out of the gate within 20 minutes of clocking in. Beard also testified that he rarely utilizes a forklift, and that the only time he does so is when he has an unsecure load that he needs to adjust and restrap. Beard testified that most of his customers unload their own freight because he makes mostly bulk deliveries. Beard testified that when his trailer is empty, he contacts the dispatch supervisor, who is his direct supervisor, for his next assignment.

Line Haul Drivers

About seven line haul drivers work at the Lathrop facility. Line haul drivers are long-distance drivers who pick up and deliver freight from terminal to terminal. Line haul drivers typically drive double trailers. Currently, four of the Employer's line haul drivers do a specific run every night, while the other three do a "wild run," meaning that they are sent wherever they are needed and that their starting times vary from day to day. Line haul drivers who have a regular route were able to select their route assignment based on seniority. When line haul drivers are on the road, they receive instructions from the Employer's central dispatch.

Michael Tucker, who has been a driver with the Employer for eight years and currently works as a part-time line haul driver, testified that when he arrives at the Employer's terminal he gets his gate time and his trailer assignment from a dispatch supervisor. He then hooks up his assigned trailers and performs a pre-trip inspection of his tractor and trailers. Tucker testified that he tries to be out of the yard within 30 minutes. Tucker testified that he does not load or unload freight from trailers. Tucker testified that when he arrives at the terminal his trailers have typically already been loaded and filled by the dockworkers. Tucker's testimony in that regard was corroborated by P&D Driver Ryan, who testified that line haul drivers usually do not come in until after their trailers are loaded. Tucker further testified that he has never had to help the dockworkers to load his trailer. Tucker also testified that he spends even more of his time away from the terminal as a line haul driver than he did as a P&D driver. Tucker testified that when he reaches his destination he drops off his entire trailer and picks up a new trailer.

Outbound Dock Supervisor Welch, who works from around 2 p.m. to midnight, testified that during his shift the line haul drivers report to him to get their trailer assignments and manifest paperwork for the night. According to Welch, when line haul drivers obtain their paperwork their trailers are not always fully loaded and if the driver's gate time is coming up the driver may work with the dockworker to load the last few items on the trailer. Welch estimated that line haul drivers spend an average of an hour and a half at the facility before they leave.[4]

APPLICATION OF BOARD LAW

As indicated above, in *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11 (2017), the Board indicated that the relevant inquiry in the case at hand is whether, in weighing traditional community of interest factors for the petitioned-for and excluded employees, the excluded employees have meaningfully distinct interests in the context of collective-bargaining that outweigh similarities with the petitioned-for unit. For the reasons discussed below, I have concluded that in this case the differences in the community of interests of dockworkers and drivers outweigh their similarities.

[4] The record establishes that Welch had only worked for the Employer for a little over two months as of the date of the hearing. Accordingly, to the extent that Welch's testimony regarding the amount of time that line haul drivers spend at the facility is contradicted by Tucker's testimony, I accord more weight to Tucker's testimony.

Employment conditions, skills, and training

The record reflects that there are substantial differences in the basic terms and conditions of employment between drivers and dockworkers. Drivers have separate pay scales from dockworkers and, unlike dockworkers, are exempt from state overtime law. Drivers also have a more advanced skillset than dockworkers and are subject to more rigorous job requirements, including the possession of commercial driver's licenses and endorsements. Furthermore, drivers have more demands placed on them in order to keep their jobs than dockworkers do, including compliance with DOT regulations which not only require that they understand DOT rules and reporting, but also that they pass regular medical screenings. Accordingly, I conclude that these factors do not support a community of interest between drivers and dockworkers.

Duties and functions

There are also material differences in the day to day functions of drivers and dockworkers. Dockworkers and drivers perform fundamentally distinct job functions – the primary role of dockworkers is to load, unload, and organize freight at the yard; while the primary role of drivers is to transport freight. Drivers spend the overwhelming majority of their time away from the Employer's facility driving and interacting with customers, while dockworkers spend all of their time at the yard handling freight and equipment. Drivers also have significantly more autonomy than dockworkers in carrying out their duties. For example, drivers schedule their own meal and rest breaks, while dockworkers are told when to take their breaks. Drivers also determine the order in which they will schedule pickups from their customers' facilities.

I recognize that there is some overlap in the day to day duties of drivers and dockworkers to the extent that drivers assist with the loading and securing of their own trailers and sometimes load and unload freight at customers' facilities. While the record contains conflicting evidence regarding the amount of time that drivers spend loading and strapping their own freight, those discrepancies appear to be based largely on record evidence that line haul drivers and heavy duty P&D drivers, who comprise over half of the drivers in question, do not assist with the loading of their trailers. In any event, any overlap in job duties goes only one way – while drivers perform certain functions that are primarily dockworker duties, the dockworkers do not perform driving duties.[5] Accordingly, *United Rentals, Inc.*, 341 NLRB 540 (2004), relied on by the Employer, is distinguishable. In that case, wherein the Board found that only an overall unit of employees was acceptable, the Board relied on evidence that the excluded counter employees "regularly and frequently" performed the duties of the petitioned-for unit of drivers, yard employees, and mechanics, including making deliveries and repairing equipment. Accordingly, I do not conclude that the overlap in duties in this case supports a community of interest between drivers and dockworkers.

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[5] The Employer's combo-drivers, of course, fall into a different category, and as discussed below, I have concluded that combo employees, who perform both dockworker and driver functions, should be included in the petitioned-for unit.

Work related contact

The record reflects that at least some of the P&D drivers have regular work-related contact with the dockworkers while they are at the facility preparing to begin their routes. The record also reflects, however, that drivers only spend about 5 to 10 percent of their time at the facility. Accordingly, I do not conclude that this factor weighs in favor of finding a community of interest between dockworkers and drivers.

Common supervision

Although the record reflects that drivers may take direction from dock supervisors to some extent, the record also establishes that drivers and dockworkers have separate primary supervision. In that regard, drivers Ryan, Tucker, and Beard all testified that they regard the dispatch supervisors as their direct supervisors, and that testimony was corroborated by Dispatch Supervisor Keech. The record also reflects, however, that dockworkers and drivers share common second-level supervision by Terminal Manager Durbin. In these circumstances, I find that common supervision is a neutral factor in this case.

Functional integration and interchange

The record reflects significant functional integration between dockworkers and drivers because dockworkers are responsible for the organizing and loading of freight onto the trailers to enable the drivers to make their deliveries. The record also establishes regular permanent interchange: fully a third of the Employer's drivers are former dockworkers who were promoted through the dock-to-driver program. That interchange only goes one way, however, as the record contains no evidence that any driver has ever become a dockworker. Accordingly, while I recognize that the evidence of permanent interchange is significant, I also note that the petitioned-for employees do not have an interest in the working conditions of the excluded employees.

Conclusion

On balance, considering the factors above, I conclude that the similarities between dockworkers and drivers do not outweigh their important differences. To the extent there is overlap in the work performed by dockworkers and drivers, that area of overlap is incidental to the drivers' overall job functions. The incidental overlap in duties between dockworkers and drivers is outweighed by the more meaningful distinctions between them, including that drivers spend the overwhelming amount of their time away from the terminal and have greater autonomy, that there are differences in skills and compensation between the two groups, and that drivers are subjected to more stringent job requirements including complying with DOT regulations and passing regular medical examinations. See *Overnite Transportation Co.*, 331 NLRB 662 (2000) (Board found that despite evidence of cross-supervision and evidence that drivers joined dockworkers in loading their trucks, it was not appropriate to include drivers in a unit of dockworkers, hostlers, maintenance employees, and janitors where the drivers performed

a separate function, possessed special skills and qualifications, and worked away from the facility most of the day); *Home Depot USA*, 331 NLRB 1289 (2000) (overruling the determination that a unit of drivers was not appropriate notwithstanding that the drivers shared common supervision and benefits with other employees, had a degree of overlapping job functions with other employees, and considerable interchange with other employees; Board found that drivers had a distinct community of interest and constituted an appropriate unit where the drivers required special qualifications and licensing, spent the majority of their time on the road, and their contact with other employees was incidental to their primary job function of operating delivery trucks). While the functional integration and permanent interchange between dockworkers and drivers in this case are not insignificant factors, I have concluded that they do not outweigh the meaningful differences between the two groups in this particular case.

The Employer also contends that dockworkers should be included in the petitioned-for unit as dual-function employees. In *Berea Publishing Co.*, 140 NLRB 516, 518-519 (1963), the Board made clear that dual-function employees who share a substantial community of interest with full-time employees in a bargaining unit are entitled to the same rights and privileges in the selection of the majority representative. Noting that the Board had traditionally permitted a part-time employee to vote in a unit where the employee is regularly employed for sufficient periods of time, the Board stated that, "we can perceive no distinction between the part-time employee, who may work for more than one employer, and the employee who performs dual functions for the same employer." 140 NLRB at 519. As indicated above, the Employer has five combo-drivers who work as both dockworkers and drivers, and I agree that those employees should be included in the petitioned-for unit. I reject, however, the Employer's argument that its remaining dockworkers should be included in the unit of drivers because they are dual-function employees. Contrary to the Employer's contention, dockworkers are not drivers. They spend all of their time in the yard loading, unloading, and organizing freight, and at times positioning equipment in the yard. While the record reflects that a few of the Employer's dockworkers drive tractors in the yard in order to position equipment, dockworkers are not qualified to drive tractors on the road, and they do not do so. They do not have commercial driver's licenses and they are not required to adhere to the regulations to which drivers must adhere. Furthermore, although drivers perform some work that is also performed by dockworkers, that work is incidental to their primary duties of driving freight and the pickup up and delivery of freight. See *Buena Park Honda*, 2016 WL 6092710 (N.L.R.B.) (denying review and rejecting the employer's argument that lube technicians must be included in the unit with service technicians because lube technicians are dual-function employees where lube technicians were not qualified to perform the more complex diagnostic and repair work performed by service technicians and that service technicians performance of some work performed by lube technicians was incidental to their primary service technician functions).

For the foregoing reasons, I have concluded that the petitioned-for unit of drivers is appropriate, and I shall direct an election therein.

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 Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[6]

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

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 combo drivers, line haul drivers, and parts and delivery drivers, excluding all other employees, dockworkers, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by GENERAL TEAMSTERS LOCAL 439, INTERNATIONAL BROTHERHOOD OF TEAMSTERS.

A. Election Details

The election will be held on Thursday, March 29, 2018, from 5 a.m. to 7 a.m., 9 a.m. to 12 p.m., and 1 p.m. to 4 p.m., at the Employer's premises, the shop located at the Company's terminal at 601 D'Arcy Parkway, Lathrop, CA.

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[6] The parties stipulated that the Employer, a California corporation with an office and place of business located in Lathrop, California, is engaged in the business of freight transportation and that during the last 12 months the Employer has provided services valued in excess of $50,000 directly to customers outside the State of California.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **March 15, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **March 22, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

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.nlrb.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.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: March 20, 2018

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
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