Concluding Finding

On the entire record, the Trial Examiner finds that the evidence does not sustain the allegations of the complaint and will recommend that the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. The Respondent, Benjamin Miller and Julius Tarr, Co-partners trading as Monroe Upholstery Company, is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) of the Act.
2. The Union, Textile Workers Union of America, AFL–CIO–CLC, is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act as alleged in the complaint.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the Trial Examiner recommends that the complaint be dismissed in its entirety.

Kalamazoo Paper Box Corporation *and* Chauffeurs, Teamsters and Helpers Local Union No. 7, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., Petitioner. *Case No. 7–RC–4831. March 6, 1962*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Iris H. Meyer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization named above claims to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons hereinafter indicated.

The Petitioner seeks to sever from the existing production and maintenance unit, currently represented by the Intervenor,[1] a unit of truckdrivers at the Employer's Kalamazoo, Michigan, operation. Alternatively, Petitioner is willing to represent a unit combining truckdrivers and shipping department employees, or any driver's unit found appropriate by the Board. The Employer and Intervenor

[1] International Brotherhood of Pulp, Sulphite and Paper Mill Workers, Local 518, AFL–CIO, herein called the Intervenor, in agreement with the Employer, urges its current contract as a bar to this proceeding. Petitioner claims that its petition was timely filed with respect thereto, and that, in any event, the contract is not a bar on other grounds. In view of our determination of the unit issue herein, we find it unnecessary to rule on these contentions.

oppose severance in any combination of truckdrivers requested by Petitioner on the ground that there is no group sufficiently distinct functionally to warrant separate representation and, therefore, the existing employerwide unit of employees established by Board certification in 1945 is the only unit appropriate for purposes of collective bargaining.

The Employer is engaged in the manufacture of folding and setup paper boxes. Its principal office and plant is located at 391 South Pitcher Street and a branch plant is operated at 3334 North Pitcher Street. The operations involved herein function in a four-story loft building. The top two floors are devoted to manufacturing. Finished products are dropped by elevator to the second floor in boxes or racks where they are counted, wrapped, sealed, and placed in inventory or assembled into orders. The first floor, in addition to the administrative offices, is occupied by the raw material storage area and the wastepaper baling operation, with the loading dock at the rear of the building. Here paperboard is brought in on vans by suppliers' drivers. Using a lift truck, the material is unloaded, checked, placed on skids, and put in stock from which it is supplied to the fourth floor manufacturing process by elevator. Orders for shipment of finished products to customers are assembled on the second floor and lowered by chutes to the loading dock where they are caught by the loaders and placed onto the trucks. Bulky orders are placed on skids and lowered by elevator.

The entire operation is under the direct supervision of the Employer's vice president in charge of production. Under his general supervision, the shipping department, consisting of the first and second floor operations, is supervised by a shipping clerk who has her office on the second floor and from which she directs the operation. Employed in the shipping department are two truckdrivers, a receiving clerk, and three wrappers. A stockhandler is presently in indefinite layoff status.

The two truckdrivers deliver the Employer's products to the customers, both locally and out of State, performing the incidental loading and unloading functions. They also truck waste from the north plant for baling at this location. As these trucking duties are insufficient for full-time occupation, requiring little more than 50 percent of their time, the truckdrivers also help in baling wastepaper on the first floor, help in wrapping, storing inventory, and assembling orders on the second floor, operate elevators to the third and fourth floors to supply the production forces, and otherwise are assigned duties in the production area.

The receiving clerk, in addition to verifying and accepting deliveries of material, assists in loading and unloading trucks, bales wastepaper, keeps the first floor and dock area clean, keeps board inventory

in proper order operating the lift truck for shifting of material, and moves board inventory to the fourth floor where production begins. He also has regular city truck delivery duties which involve approximately 15 to 20 percent of his working time. Occasionally he works on the second floor as a wrapper or stockhandler. There are production employees classified as stockhandlers on both the third and fourth floors. Wrappers, who ordinarily perform the functions carried on at the second floor are also used as stockhandlers and work with production employees when they have no wrapping or order assembly duties to perform, and production department employees are used to help on the second floor if it becomes overcrowded with stock or orders.

In addition to the lift truck used within the plant, the Employer has four trucks; two tractor-trailers and two small vans. Demand for deliveries increases in the fall of the year and maintains its highest rate through Christmas. During this period the Employer's four trucks are frequently out on deliveries, two of them operated by employees other than truckdrivers. Production employees may be called upon to make truck deliveries at any time when needed, but have occasion to do so most frequently during the busy season. Seniority is on a plantwide basis, and when layoffs are necessitated because of slack demand for deliveries, truckdrivers are not laid off for that reason but are rather placed in their sequence in the employerwide seniority list. Thus, during such periods truckdrivers spend more of their working time performing other duties in the plant. All employees are paid an hourly rate and receive the same benefits.

A plantwide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees. Where there has been a history of bargaining in a production and maintenance unit, including truckdrivers, the existence of a substantial difference in interests and working conditions of truckdrivers from those of other employees, which outweighs their admitted community of interest, must be demonstrated to warrant granting their severance therefrom as a separate appropriate unit.

Examination of past Board practice in truckdriver severance cases discloses that at an early period the Board recognized the dual nature of the interests of truckdrivers encompassing both a common interest with other employees of the same employer and a special homogeneity growing out of their particular function in the employer's operation. The Board concluded that, where their special separate interests were emphasized by the existence of substantial differences in their working conditions as distinguished from those of other employees, severance as a separate truckdrivers' unit was warranted. It was the functional rather than organizational or craft skill distinctions which formed the basis for separate units of truckdrivers, giving recognition to the differing interests created thereby. The degree of these differences,

however, varied greatly from industry to industry and from employer to employer, depending to a large extent upon particular business practices. It was necessary, therefore, to evaluate the conditions which obtained in each given situation in order to determine where the predominant community of interest existed.

Factors which warranted consideration in determining the existence of substantial differences in interests and working conditions included: a difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training, and skills; differences in job functions and amount of working time spent away from the employment or plant situs under State and Federal regulations; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.

In more recent times, while the Board has occasionally made references to the eixstence of some of these factors in granting severance of truckdrivers from more comprehensive units, it has, for the most part, not required an affirmative showing in each case that their interests and conditions of employment substantially differed from those of other employees in the established unit. The net result, in effect, has been tantamount to a practice of automatically granting severance to truckdrivers whenever requested.

As we view our obligation under the statute, it is the mandate of Congress that this Board "shall decide in each case . . . the unit appriate for the purpose of collective bargaining."[2] In performing this function, the Board must maintain the two-fold objective of insuring to employees their rights to self-organization and freedom of choice in collective bargaining and of fostering industrial peace and stability through collective bargaining. In determining the appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time it creates the context within which the process of colective bargaining must function. Because the scope of the unit is basic to and permeates the whole of the collective-bargaining relationship, each unit determination, in order to further effective expression of the statutory purposes, must have a direct relevancy to the circumstances within which collective bargaining is to take place.[3] For, if the unit determination fails to relate to the factual situation with which the parties must deal, efficient and stable collective bargaining is undermined rather than fostered.

To accord automatically to a subgroup of employees such as truckdrivers, severance from a larger established and stable bargaining

[2] Section 9(b) of the Act.

[3] See *American Cyanamid Company,* 131 NLRB 905

unit merely on the basis of the existence of the traditional job classification and a request for a separate unit encompassing such classification, does not, in our opinion, adequately discharge this basic and far-reaching responsibility placed upon the Board by Congress. A title or classification in common usage does not necessarily establish that separate special interests exist and are preponderant. This can be determined only by making an informed judgment based upon an analysis of the factual circumstances bearing upon the distinguishing factors present in each case.

With this view in mind, we have carefully considered the present practice and are convinced that it is not a salutary approach toward achieving the purposes of the Act, because it tends to disregard the community of interests which truckdrivers have with other employees, and ignores the possibility that the job content and employment situation may not be accurately reflected in the classification or title held—indeed may have little relevancy to the circumstances with which the parties must deal. Therefore, we believe it is both necessary and desirable for us to return to the earlier practice of determining the predominant community of interest based upon consideration of the various factors stated above. Where these factors support a conclusion that the community of interest shared by truckdrivers with other plant employees outweigh those which would be the basis for severance from an existing production and maintenance unit, we shall deny severance to truckdrivers. To the extent that this approach is inconsistent with that implied in prior determinations, such cases are hereby overruled.

On the facts present in the instant case, it is clear that the truckdrivers are under the same supervision, receive the same benefits, work the same hours, are paid on the same basis, and are on the same seniority list as all other employees. Their duties are closely associated with the operations of the plant. Although these two employees may spend about half of their time in truck driving and loading and unloading, there exists such regular and frequent interchange with other employees that we cannot say that the two truckdrivers constitute a separately identifiable unit. Thus, the truckdrivers spend a substantial portion of their time working alongside, or in close proximity with, and perform exactly the same functions as other production and shipping employees. Similarly, production as well as shipping employees also make truck deliveries. The same is true with respect to the shipping department employees who also interchange duties with production employees. These facts all point to the lack of separate interests of truckdrivers, and emphasize the basic overall community of interests of the employees in the employerwide unit in which these employees have been represented for a number of years.

In these circumstances, the Board is convinced, and finds, that neither the truckdrivers, alone, nor the shipping department, as such, constitutes a functionally distinct group with special interests sufficiently distinguishable from those of the Employer's other employees to warrant severing them from the overall unit.

Our dissenting colleagues misinterpret the import of our decision herein. We do not hereby hold that where the truckdrivers involved constitute a functionally distinct group of employees engaged in their traditional occupation, they may no longer be severed from a broader industrial type unit. Nor are we overruling those cases which, after evaluating the particular factual situation involved, concluded that the circumstances warranted severance because of distinct and separate interests. What we are holding is precisely this: before we will accord severance from an established unit to those claiming functional distinction with resulting special interests, we will first determine whether in reality they constitute a functionally distinct group and whether as a group they do have overriding separate special interests; and we hold the view that this determination must be based upon the factual situation existing in each case and not upon title, tradition, or practice.

Our dissenting colleagues, in quoting Section 9(b) and particularly in relying upon Section 9(b)(2) have misplaced the emphasis. Without here delineating what degree of limitation is placed by Section 9(b)(2) upon the Board's discretion in according weight to bargaining history or a prior determination in craft severance cases, suffice it to reiterate our observation that truckdrivers units are not based upon craft status, and even if as a general proposition they were treated as craftlike in character, it cannot be urged that Congress contemplated according special status to one and all who may claim it. Before permitting severance of such special units, it is the Board's duty to determine not only whether the employees sought qualify as craftsmen but also whether they are in fact engaged in their specialized occupation. Moreover, our determination here is not based solely upon a history of bargaining as part of a larger unit, but rests upon a finding required by the pertinent facts presented that the employees sought do not have such special and distinct interests as would outweight and override the community of interest shared with other plant employees. In these circumstances, permitting severance of truckdrivers as a separate unit based upon a traditional title, as our colleagues urge, would result in creating a fictional mold within which the parties would be required to force their bargaining relationship. Such a determination could only create a state of chaos rather than foster stable collective bargaining, and could hardly be said to "assure to employees the fullest freedom in exercising the rights guaranteed by this Act" as con-

templated by Section 9(b). In view of the foregoing, we shall dismiss the petition.

[The Board dismissed the petition.]

MEMBERS RODGERS and LEEDOM dissenting:

The Petitioner seeks to sever a unit of truckdrivers from an existing production and maintenance unit. Under well-established Board policy, the Petitioner is clearly entitled to an election in such a unit.

The Board from its very inception has recognized the separate identity and interests of truckdrivers. Thus, the Board has consistently established them in separate units in appropriate circumstances.[4] In other circumstances, it has consistently granted them self-determination elections.[5] Even before 1947 there were instances where the Board permitted truckdrivers to sever from existing production and maintenance units.[6] Since the enactment of the Taft-Hartley

[4] The Board has found a separate unit of truckdrivers appropriate: (1) Where there was no bargaining history and the petitioner sought to represent the truckdrivers separately as against the contention that only an overall or plantwide unit was appropriate: *Motor Transport Co*, 2 NLRB 492; *Triangle Publications, Inc.*, 39 NLRB 547; *United States Rubber Company, Scioto Ordnance Plant*, 49 NLRB 961; *Simmons Company*, 112 NLRB 83; *Standard Oil Company of California*, 67 NLRB 139; *Buick Motor Division, General Motors Corporation Jet Plant*, 105 NLRB 488; *May Department Stores Company d/b/a The May Company*, 85 NLRB 550; *Riteway Motor Parts Corp*, 115 NLRB 294; *Maule Industries, Inc*, 117 NLRB 1710; *Truss-Mart Corporation, et al.*, 121 NLRB 1430, *Alamo-Braun Beef Company, et al.*, 128 NLRB 32. (2) Where the production and maintenance employees, excluding truckdrivers, were already represented, and it was alleged that only an overall unit including the truckdrivers was appropriate: *Fairmont Creamery Company*, 58 NLRB 39; *The Ohio Rubber Company*, 74 NLRB 1269; *Arcata Plywood Corporation, et al*, 120 NLRB 1648. (3) Where the truckdrivers and the production and maintenance employees were already represented in separate units and the petitioner sought an overall unit: *Star Union Products Company*, 127 NLRB 1173. (4) Where most employees were represented in a production and maintenance unit and on of the petitioners sought to include the truckdrivers as part of the residual unit: *Superior Typesetting Co*, 118 NLRB 15

[5] For example, *Pacific Greyhound Lines*, 4 NLRB 520; *United States Rubber Company, Scioto Ordnance Plant*, 49 NLRB 961; *Standard Oil Company (Ohio), Cleveland Division*, 63 NLRB 1248; *Westheimer Transfer & Storage Company, Inc*, 71 NLRB 1286; *Heyden Chemical Corporation*, 85 NLRB 1181; *Ford Motor Company, Aircraft Engine Division*, 96 NLRB 1075; *Lake County Farm Bureau Cooperative Association, Inc.*, 101 NLRB 110; *Ira Grob, Inc.*, 110 NLRB 626; *Swift & Company*, 117 NLRB 61; *International Furniture Company*, 119 NLRB 1462; *Truss-Mart Corporation and Gaines Construction Co, Inc.*, 121 NLRB 1430; *Reichhold Chemicals, Inc.*, 126 NLRB 619; *Star Union Products Company*, 127 NLRB 1173.

[6] Prior to 1947, the Board adhered to the rule, laid down in *American Can Company*, 13 NLRB 1252, that a history of bargaining in a broader unit including the employees sought, would preclude any attempt to sever distinct groups, such as truckdrivers, from the broader unit. Although this rule was generally followed, it became subject to exceptions which, the Board found, justified severance See, for example, with respect to truckdrivers *Federal Telephone and Radio Corporation*, 49 NLRB 938; *Sutherland Paper Company*, 55 NLRB 38; *Sioux City Brewing Company*, 63 NLRB 964; *Radio Corporation of America, RCA Victor Division*, 66 NLRB 1014; *Lockheed Aircraft Corporation*, 73 NLRB 220. Implicit congressional approval of the Board's policy in allowing severance for distinct groups irrespective of any bargaining history on a broader basis, was made explicit in Congress' enactment of Section 9(b): "The Board shall decide in each case whether, *in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act*, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not . . . (2) decide that any unit is inappropriate for such purposes on

Act—for some 14 years—the Board has consistently allowed such severance, requiring only that there be a showing that real truckdrivers were involved.[7]

These established precedents are based on the fact that truckdrivers constitute a functionally distinct group of employees engaged in a traditional occupation. These precedents recognize the fact that the interests of truckdrivers are identified with the function of transportation, rather than with the particular business or industry which they serve; that, in the carrying out of their duties, truckdrivers are subject to Federal and State regulations—regulations which do not affect other employees; that truckdrivers exercise distinctive skills, and are charged with substantial responsibilities with respect to life and property; and that truckdrivers spend a considerable portion of their time away from the plant and out of contact with the other employees. In short, they recognize that truckdrivers are sufficiently "different" from the employees in the particular plant or business that may be involved as to warrant their establishment as a separate unit when they are sought separately.

Without coming forward with any persuasive reason for doing so, our colleagues are now reversing sound and settled Board policy, which has been applied in literally hundreds of cases. They protest that the present practice is not "salutary," allegedly because it tends to disregard the community of interests which truckdrivers have with other employees. Yet, the Teamsters Union, the traditional representative of truckdrivers, has never protested the present Board practice—has never said that the present practice is an obstacle to the realization of the "community of interests which truckdrivers have with other employees." Nor have protests from employees who are truckdrivers come to our attention. On the contrary, the innumerable severance elections in which truckdrivers have voted for separate representation, impel the conclusion that truckdrivers themselves do not believe that their so-called community of interests is being thwarted by the Board

The record clearly discloses that the truckdrivers here spend more than 50 percent of their time driving trucks and performing duties

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the ground that a different bargaining unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation." [Emphasis supplied]

[7] For example, *Swift & Company, d/b/a New England Dressed Meat and Wool Company*, 81 NLRB 1197; *Swift & Company, d/b/a Sperry and Barnes Company*, 82 NLRB 748; *John A. Denie's Sons Co*, 86 NLRB 682; *General Box Company*, 93 NLRB 789; *American Coat, Apron & Laundry Co, Inc*, 100 NLRB 258; *United States Defense Corporation*, 101 NLRB 1065; *Sherman White & Company*, 109 NLRB 1; *Tennessee Egg Company*, 110 NLRB 189; *Stauffer Chemical Company of Nevada*, 113 NLRB 1255; *United States Smelting, Refining and Mining Company*, 116 NLRB 661; *Interchemical Corporation*, 116 NLRB 1443; *Painesville Works, General Chemical Division, Allied Chemical and Dye Corporation*, 116 NLRB 1784; *Beechnut Foods Division of The Beechnut Life Savers Co., Inc.*, 118 NLRB 123.

incidental thereto.[8] Nevertheless, our colleagues conclude that the truckdrivers lack a separate community of interest and have a "predominant community of interest" with the production and maintenance employees in the employerwide unit. How our colleagues reach this conclusion is difficult to comprehend. It seems clear to us that an employee's "predominant community of interest" is simply, and quite naturally, a reflection of his "predominant" duties and responsibilities. Here the truckdrivers' "predominant" duties and responsibilities revolve around the driving of trucks and not the process of manufacturing paper boxes. The drivers' "predominant community of interest" lies, therefore, with one another and not with other employees who work in the Employer's plant.

Furthermore, we do not find persuasive the factors enumerated and relied upon by our colleagues to support their conclusion that the truckdrivers "lact separate interests." Some of the factors, for example, wages, "benefits," and seniority, are the same for all employees perhaps only because the truckdrivers have not yet had separate representation. The other factors cited by our colleagues are clearly overshadowed by one salient fact—these drivers spend more than 50 percent of their working time performing the duties of a truckdriver. As the Board said in *Painesville Works, General Chemical Division, Allied Chemical and Dye Corporation*, 116 NLRB 1784, "where the aggergate time spent on [driving, loading, and unloading] preponderates over time spent in other duties, we will accord to the drivers the right to separate representation."

We would therefore follow precedent and direct a severance election.

[8] Our colleagues have stated that the two employees classified as truckdrivers spend "little more than 50 percent of their time" and "about half of their time" performing truckdriving duties. They further state that the truckdrivers have "regular and frequent" interchange with other employees, and that the truckdrivers spend a "substantial" portion of their time working with, and performing the same functions as, the production and shipping employees. We do not believe the record supports our colleagues in this respect.

Mr. Kirkpatrick, the Employer's president, was asked only whether the truckdriver's duties required more than 50 percent of their worktime, and he answered "that's right." Such an answer does not mean "little more than 50 percent" or "about half." The record also indicates that "The truckdrivers are used primarily as truckdrivers," and that only "occasionally," "in their spare time," and "only when their truck driving duties fall down somewhat," are they ever given nontruckdriving duties to perform. Such occasional assignments do not, in our view, constitute the "regular and frequent" interchange which our colleagues have found.

Stuart F. Cooper Co. *and* Bookbinders and Bindery Women's Local No. 63-63A. *Case No. 21-CA-4135. March 7, 1962*

DECISION AND ORDER

On January 23, 1961, Trial Examiner Eugene K. Kennedy issued an Order Closing Hearing and Dismissing Complaint, which is at-