

Leslie Metal Arts Company, Incorporated and General Teamsters Union, Local No. 406, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.¹ Petitioner. Case 7-RC-7974

October 6, 1967

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN

On April 28, 1967, the Regional Director for Region 7 dismissed a petition for election in the above-entitled proceeding. In accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's Decision, which was considered together with a statement in opposition filed by the Employer. Thereafter on June 12, 1967, the Board granted review and remanded the proceedings to the Regional Director for issuance of a notice of hearing and/or other appropriate action. Subsequently, a hearing was held before Theodore C. Niforos, a duly designated Hearing Officer. After the hearing was closed, the Regional Director transferred the case to the Board in accordance with Section 102.67(h) of the Board Rules and Regulations due to the apparent uniqueness of the issue involving Section 9(c)(3) of the Act. The parties have timely filed briefs in support of their respective positions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They 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, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

3. A question affecting commerce exists concerning the representation of employees of the Em-

ployer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Petitioner seeks an election in a unit comprising all truckdrivers of the Employer at its plant No. 1, 3225 32nd Street, SE.; plant No. 2, 549 Ionia Avenue, SW., both in Grand Rapids, Michigan; and plant No. 3, Middleville, Michigan, excluding office clerical employees, guards, and supervisors as defined in the Act, and all other employees.

The Employer is a Michigan corporation engaged in the manufacture of automotive parts (sheet metal stampings) with its principal office, plant No. 1, located at 3225 32nd Street, SE., Grand Rapids, Michigan. The Employer has two other plants in Grand Rapids, Nos. 2 and 4. Plant No. 3 is located in Middleville, Michigan. The Company employs six truckdrivers: four at plant No. 1, and one each at plants Nos. 2 and 3.

On November 10, 1966, an election² pursuant to stipulation of the parties was conducted at plant No. 1 in a unit composed of all production and maintenance employees, including, *inter alia*, the four truckdrivers at plant No. 1. The two truckdrivers stationed at plants Nos. 2 and 3 were not eligible to vote. The United Automobile Workers (UAW), the only labor organization involved, lost that election and the results have been certified. Subsequently, on April 3, 1967, the IBT filed the present petition.

The Employer contends that the proposed unit should properly be viewed as a subdivision of the unit in which the previous election was held and that, consequently, Section 9(c)(3) of the Act bars a second election within 12 months.³ Alternatively, the Employer contends that the petition describes an inappropriate unit.

In previous cases involving the application of Section 9(c)(3), the Board has held that an election conducted in a craft or departmental unit does not bar a subsequent election in a larger overall unit.⁴ Similarly, the Board has held that participation in an election by the production and maintenance employees at one of an Employer's 10 locations did not preclude their participation within 12 months in an election conducted in a multiplant unit.⁵

A multiplant unit is broader in scope than a single-plant unit. The fact that the truckdrivers at one of the Employer's four plants were eligible to vote in an election within the preceding 12 months in an overall production and maintenance unit does not bring the election petitioned for here within the ambit of Section 9(c)(3), for the election directed

¹ The name of the Petitioner appears as amended at the hearing.

² Case 7-RC-7746, not published in NLRB volumes

³ Section 9(c)(3) of the Act provides in pertinent part that

No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid elec-

tion shall have been held

⁴ *Thiokol Chemical Corporation*, 123 NLRB 888, *Pacific Maritime Association*, 110 NLRB 1647, 1651

⁵ *Vacuum Cooling Company*, 105 NLRB 794

herein is in a unit which is not the unit or a subdivision of the unit in which the prior election was conducted. Accordingly, we find that Section 9(c)(3) does not bar an election in the unit sought.

We also find that the truckdrivers may constitute a separate appropriate multiplant unit.

Blower, the truckdriver assigned to plant No. 2, testified at the hearing that approximately 90 percent of his time was spent driving, loading, and unloading his truck. Savara, the Employer's traffic manager and the only other witness, testified that the main duty of the truckdrivers is driving.⁶ Duties performed by truckdrivers other than those which normally form a routine part of a truckdriver's duties are apparently subsidiary to their main job. Other than in an emergency situation, when a foreman may drive, only truckdrivers drive trucks. A chauffeur's license is required.

Employer's exhibits,⁷ containing a tabulation of "driving time out" and "total hours worked," show that during the period from March 26, 1967, to June 18, 1967, the drivers, as a group, spent approximately 50 percent of their time driving away from their home plants. The exhibits, however, neither indicate what portion of their time is spent at their home plant in loading and unloading trucks nor how much in waiting or other downtime. The Board has held that loading and unloading trucks is a normal part of a driver's duty⁸ and, for that portion of their time as well as time spent in waiting for loads, the drivers are engaged in duties normally performed by truckdrivers.

From the foregoing, we find that the truckdrivers, as a group, regularly spend a preponderance of their time in typical truckdriving and associated duties. The Board has traditionally held that truckdrivers, such as those involved in this case, forming a functionally distinct and homogeneous group, may constitute a separate appropriate unit in the absence of a bargaining history, where a union seeks to represent them separately and no other labor organization seeks to represent them in a larger unit.⁹

⁶ Savara additionally testified that the drivers at plant No. 1 load and unload trucks, do routine packaging of goods, yard work, weight counting, and degreasing, have been loaned to the production department, and have been used in taking inventory. His testimony, however, was general and not specific. With one exception (that of one driver who participated to some undefined extent in an inventory 6 months before) he did not name the drivers involved, did not indicate that such work was performed by drivers on any regular schedule, and did not testify with respect to the amount of time spent by drivers performing such nondriving duties.

⁷ Exh. 1(g) was submitted after the close of the hearing pursuant to stipulation of counsel and is hereby received into evidence and made a part of the record in this case.

⁸ *Allied Chemical and Dye Corporation*, 116 NLRB 1784.

⁹ *St. Johns Associates, Inc.*, 166 NLRB 287. *Ballentine Packing Company*, 132 NLRB 923.

¹⁰ The rate varies from \$2.45 to \$2.80 an hour.

¹¹ *National By-Products Company*, 122 NLRB 334. The company operated meat processing plants at three cities in Colorado and pickup sta-

We further find that a multiplant unit of these truckdrivers is appropriate. All four of the Employer's plants are located within a 30-mile radius. Centralized master records are kept at plant No. 1 and the payroll for all four plants is prepared at Plant No. 1. Although there is testimony that the individual plant managers determine the rate for each driver, the drivers at all of the plants are paid at an hourly rate and receive similar rates of pay.¹⁰ There is no interchange of employees between the plants, but this alone has been held not to be determinative of the appropriateness of a multiplant unit.¹¹ Most of the driving is done between the Employer's plants, and the drivers come into contact with one another while making pickups and deliveries at the various plants.

The Company employs a traffic manager, Raymond Savara, who is located at plant No. 1. Savara is the immediate supervisor of the shipping and receiving foreman, who supervises the truckdrivers at plant No. 1. According to his testimony, Savara acts only as an adviser to the managers of the other plants. He has, however, visited all of the plants for periods of up to 6 weeks in this capacity, and as a "corporate observer" has made "suggestions" to the other plant managers. We are convinced that Savara at least coordinates the traffic operations of the Employer at and between the other plants and plant No. 1, where he has direct responsibility for truck operations.

Accordingly, we find that 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 truckdrivers of the Employer at its plant No. 1, 3225 32nd Street, SE.; plant No. 2, 549 Ionia Avenue, SW., both in Grand Rapids, Michigan; and plant No. 3, Middleville, Michigan, excluding office clerical employees, guards, and supervisors¹² as defined in the Act, and all other employees.

[Direction of Election¹³ omitted from publication.]

tions at two other locations. While there was no employee interchange between the drivers at the pickup stations and they serviced different cities, the Board held that since the manager at Denver had overall supervision, assigning routes and pickup areas, and since both stations serviced the same geographical area, the drivers at both stations had a sufficient community of interest to form an appropriate unit.

¹² It was stipulated that the shipping and receiving foremen are supervisors, and we therefore exclude them from the unit.

¹³ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 7 within 7 days after the date of this Decision on Review and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.