

Pacemaker Mobile Homes, a Division of Loneragan Corporation and Local 229, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 4-RC-8858

December 28, 1971

**DECISION ON REVIEW AND
CERTIFICATION OF BARGAINING
REPRESENTATIVE**

BY MEMBERS FANNING, JENKINS, AND
KENNEDY

Pursuant to a Decision and Direction of Election issued by the Regional Director for Region 4 on December 9, 1970, an election by secret ballot was conducted on May 28, 1971, in a unit of production and maintenance employees. The tally of ballots indicated that of the 77 ballots cast, 36 were for and 34 against the Petitioner, and 7 ballots, all cast by truckdrivers, were challenged. The challenged ballots are sufficient in number to affect the results of the election. No objections to conduct affecting the results of the election were filed by either party.

In accordance with the National Labor Relations Board Rules and Regulations, the Regional Director issued a Supplemental Decision, Order Directing Hearing and Notice of Hearing on Challenges and, on June 22, 1971, a hearing on challenges was held before Hearing Officer Robert A. Lieberman. On July 16, 1971, the Hearing Officer issued his report recommending that all challenges be overruled and that the ballots of the seven truckdrivers be opened and counted. The Petitioner filed exceptions to that report and, on September 16, 1971, the Regional Director issued a Supplemental Decision and Determination of Challenges in which he affirmed the Hearing Officer's findings and recommendation.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Petitioner filed a timely Request for Review of the Regional Director's Supplemental Decision, contending that the overruling of the challenges was erroneous. Subsequently, the Employer filed a statement in opposition to the Petitioner's Request for Review.

The Board by telegraphic order dated October 14, 1971, granted the Petitioner's Request for Review and

stayed the opening and counting of ballots pending decision on review.

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

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

It is undisputed that throughout the course of the preelection proceedings herein, neither party in any way referred to the truckdrivers whose unit placement is now at issue.¹ The first reference to the existence of any truckdrivers was made when their names appeared on the *Excelsior* list submitted by the Employer on May 10, 1971; and the question of their unit placement was first put in issue when the Petitioner challenged the ballots of all seven of the drivers, contending that truckdrivers should be excluded from the unit. Under these circumstances, we shall apply the same unit criteria which would have been applied if the Petitioner had—during the course of the preelection proceedings—specifically requested a unit excluding truckdrivers, and the Employer had opposed that request.

The Employer is engaged in the business of producing mobile homes and modular units on an alternate basis.² Like the mobile homes, the interiors of the modular cubicles represent complete living units. Unlike mobile homes, which come off the production line ready for delivery and use by the buyer, modular units are placed on a lo-boy and transported from the Employer's plant at Scranton, Pennsylvania, to the buyer's site at Edgewood, Maryland—a distance of over 200 miles—where one or more cubicles are installed into the frame of an apartment building to form a studio or a one- or two-bedroom apartment.

The seven truckdrivers challenged by the Petitioner haul these modular units from the plant to the Maryland site. When a driver reports for work, the unit has already been placed on a lo-boy parked away from the plant building, in or beyond the yard area. The driver reports to the office and obtains the necessary papers; inspects and secures the unit for shipment; and proceeds to the site. Upon arrival, the driver reports to the Employer's foreman at the site; checks the unit for damage and spots it for lift up by the crane; removes the bolts used to secure the cubicle

Excelsior list submitted by the Employer in anticipation of the January 15, 1971, election date.

² From November 1970 to February 1971 mobile homes were produced, from March to June 1971, that is, before and after the election, modular units were produced, and during the summer months production of mobile homes was resumed. The Employer's general manager indicated that he expects to be producing modular units from September 1971 to April 1972.

¹ The election herein was originally scheduled for January 15, 1971, but was postponed pending the Board's Decision on Review of the Regional Director's decision that group leaders were not supervisors. On April 30, 1971, the Board affirmed the Regional Director's decision and the election was rescheduled and conducted on May 28, 1971.

At the preelection hearing in November 1970 no reference was made to the truckdrivers or to the men who have supervised them; and the names of the truckdrivers then employed were not included on the original

to the lo-boy; and installs the bolts used to lift it into the frame of the apartment building.³ After the crane has lifted the unit off of the lo-boy, the driver returns to the plant with the empty lo-boy. This entire process takes from 10 to 12 hours with 6 to 8 hours spent on the road, 2 hours at the site, and the remaining 2 hours checking in and out at the plant.⁴

Drivers may report to work anytime after sunup but are generally on the road early. They are paid on a mileage basis except that they receive an hourly wage for time spent at the site, for checking in and out at the plant, and for whatever time they may occasionally spend doing yard work.⁵ Each driver also receives a \$200 advance against expenses and is allowed 14-16 cents per mile for gasoline and oil costs. The Employer pays for part of the cost of the truckdrivers' uniforms but pays for only the major repairs on the trucks. Drivers keep a log and are governed by ICC regulations.

In contrast to the above, production employees begin work at 7 a.m. and are paid on an hourly or incentive basis. They leave when their work is finished and it appears that some often leave as early as 1 or 2 p.m. Production employees do not wear uniforms and the only equipment supplied to them by the Employer is safety goggles. All employees, including truckdrivers, receive the same holiday and vacation benefits.

The above facts present an overall picture which is similar to many cases involving the inclusion-exclusion problem with respect to truckdrivers, i.e., these truckdrivers have what amounts to a dual community of interest with some factors supporting their exclusion from an overall production and maintenance unit and some factors supporting their inclusion in the broader unit. As the Board has frequently noted, in such a situation and where no other labor organization is seeking a unit larger or smaller than the unit requested by the Petitioner, the sole issue to be determined is whether or not the unit requested by the Petitioner is *an* appropriate unit. Accordingly, while we agree that certain factors may support the

Regional Director's conclusion that a unit including the truckdrivers is an appropriate unit, in our view the unit requested by the Petitioner which would exclude the truckdrivers is *an* appropriate unit and it is therefore irrelevant that a larger unit might also be appropriate.⁶

In concluding that a unit excluding truckdrivers is an appropriate unit, we note in particular that these truckdrivers are a functionally distinct group possessing different skills and qualifications than production employees, that they have little or no contact with other employees, and that they are away from the plant most of the day working without any direct supervision. Moreover, unlike production and maintenance employees, they are paid primarily on a mileage basis, are entrusted with a \$200 advance against expenses, are required to wear a uniform, and work 10-12 hours each day. Finally, their primary function is to deliver the Employer's product and they do not perform any production work on a regular or substantial basis. Under these circumstances, we conclude that the truckdrivers have a community of interest sufficiently separate so as to warrant their exclusion from the production and maintenance unit.

Accordingly, as the tally of ballots shows that the Petitioner has received a majority of the valid ballots cast, we shall certify it as the exclusive bargaining representative for the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes have been cast for Local 229, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that said labor organization is the exclusive representative of the employees in the unit found appropriate, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

³ Although the Employer contends that drivers perform production work to the extent that they may be required to make repairs on the unit prior to delivery to the site or before installation into the building frame, it appears that while the drivers do make a routine check of the unit pursuant to a form provided by the Company, only minor repairs are expected of them—such as repairing the plastic covering used to protect the cubicle from the weather.

⁴ The same truckdrivers also deliver mobile homes for the Employer, but the record contains no description of the distances or procedures involved.

⁵ The Employer testified that on the day before a holiday when ICC regulations require a driver to stay off the road, he may occasionally use a couple of truckdrivers in the yard, but gave no specific information as to how often this might occur. However, the Employer did specifically state that all seven truckdrivers were hired as truckdrivers, that they have never acted as substitutes for production employees, and that the primary function of the truckdrivers was to deliver the product.

⁶ See *Tallahassee Coca-Cola Bottling Co.*, 168 NLRB 1037, enfd 409 F.2d 201 (C.A. 5, 1969), and cases cited therein.