

Hazard Express, Inc. and Teamsters Local Union No. 651, International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 9-RC-16971

October 30, 1997

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions of which are attached). The request for review is denied as it raises no substantial issues warranting review. The Employer's request for a stay of the election also is denied.

It is well settled that a petitioned-for employerwide unit is presumptively appropriate. *Jackson's Liquors*, 208 NLRB 807 (1974). As found by the Regional Director, the wage rates for all similarly classified employees are essentially the same, labor relations policies are centrally established and administered, and all benefits are identical. Louisville drivers collect freight from the area and return it to the facility, where they load it on trailers for pickup by the Hazard and Lexington drivers. The facts that Louisville drivers pick up freight and return to their facility, but do not deliver (unlike the other drivers) and that there are no dockworkers or dispatcher at Louisville are insufficient to rebut the employerwide presumption. Indeed, the absence of any management or supervisor at Louisville weighs in favor of including the facility in the unit. The Employer cites *Bowie Hall Trucking*, 290 NLRB 41 (1988), in support of its position that Louisville drivers should be excluded from the unit. However, in *Bowie*, supra, the petitioner sought a single-facility unit. The single-facility presumption is inapplicable when a petition is for a multifacility unit, as here. *NLRB v. Carson Cable TV*, 795 F.2d 879, 886-887 (9th Cir. 1986); *Capital Coors Co.*, 309 NLRB 322 fn. 1 (1992). In addition, the Employer does not argue that only a single-facility unit is appropriate. For these reasons, we deny the request for review.

APPENDIX

REGIONAL DIRECTOR'S DECISION AND DIRECTION

The Employer, a corporation, is engaged in the transportation of freight from facilities located in Hazard, Lexington, and Louisville, Kentucky, where it employs approximately 38 employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent an employerwide unit comprised of all full-time and regular part-time drivers, dockworkers, and helpers employed by the Employer at its

facilities located in Hazard, Lexington, and Louisville, Kentucky, excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act. The Employer generally agrees with the composition of the unit. However, contrary to the Petitioner, the Employer contends that the scope of the unit should not include its Louisville, Kentucky facility. The parties also disagree over the unit placement of the Hazard dispatcher, Steve Napier, and the Lexington dispatcher, Thomas Newton, whom the Petitioner, contrary to the Employer, would exclude from the unit as supervisors within the meaning of Section 2(11) of the Act. The Employer does not employ a dispatcher in its Louisville operation.

Unit Scope

The Employer is a licensed "less than trailer load" (LTL) carrier operating primarily in Eastern Kentucky. The Employer's main terminal and corporate offices are located in Hazard, Kentucky. The Employer also operates terminals in Lexington and Louisville, Kentucky. The Employer's business consists of picking up and delivering freight to various customers throughout Eastern Kentucky. The Employer receives freight at its docks in Hazard and Lexington, Kentucky, which it picks up from customers or which is delivered by other interstate transportation companies. The freight is broken down and loaded on the Employer's trailers by dock employees, who are occasionally assisted by drivers. The freight is then delivered to customers from the Hazard and Lexington terminals by drivers who are assigned specific routes. On their routes, the Hazard and Lexington drivers pick up freight from customers and return it to the docks for shipment to its final destination by the Employer or other carriers. The Employer employs 22 drivers and dock employees at Hazard and 14 at Lexington, some of whom, referred to as combination employees, perform both driving duties and dock work. If employees have a commercial driver's license, they receive the same hourly rate of pay regardless of whether they are classified as dockworkers or drivers. All employees receive the same benefits.

Contrary to the Petitioner, the Employer would exclude the employees who work in its Louisville operation from the unit. The Employer maintains that its Louisville operation may have to be closed in the near future and, in any event, the Louisville based employees do not share a sufficient community of interest with its Hazard and Lexington drivers and dock employees to warrant their inclusion in the same unit.

The Employer has maintained a small operation in Louisville in excess of 40 years. The record discloses that two long-term Louisville drivers left the Employer in late 1996 and the Employer has encountered some difficulty in replacing them. Indeed, there has been substantial turnover among the Louisville drivers since January 1997 and the record discloses that the Employer has hired five or six drivers for its Louisville operation since that date. The two current drivers are relatively new, having been employed for less than 90 days. In addition, the long-term billing clerk at Louisville recently retired and had to be replaced. At the hearing, the Employer's secretary-treasurer, Ed Chappell, whose family owns the Company, testified that the Employer may consider terminating its Louisville operation unless it can stabilize the work force.

Although the Employer has encountered recent problems in staffing its Louisville operation, it now has a full employee complement of two drivers and a clerical employee. The Employer is also currently seeking to employ a terminal manager at that facility. There is no evidence that the Employer plans to terminate the Louisville operation in the near future or has any desire to do so. To the contrary, Ed Chappell testified that the Employer wanted to continue the Louisville operation and increase that business.

Based on the foregoing, the entire record and the arguments of the parties at the hearing and the Employer's brief, I find that the Employer's contention that the Louisville drivers should not be included in the unit on the ground that it may have to close the Louisville facility lacks merit. Although there has been some recent turnover among the Louisville employees, the Employer now has a full employee complement and is not seeking to sell, close, or subcontract its Louisville operation. Rather, the Employer is attempting to stabilize the Louisville operation, hire a terminal manager for the facility, and increase its business in that area. The Board has consistently held that the mere speculation as to the uncertainty of future operations is not sufficient to dismiss a petition or decline to hold an election. See *Canteberry of Puerto Rico, Inc.*, 225 NLRB 309 (1976); *Gibson Electric*, 226 NLRB 1063 (1997). Accordingly, there is no basis for declining to include the Louisville drivers in the unit based on the future uncertainty of that operation. *Canteberry of Puerto Rico, Inc.*, supra. The Employer has not cited, and I am not aware of, any case precedent to the contrary.

Having found that there is no basis for excluding the Louisville drivers because of the uncertainty of the Louisville facility's future operations, I must determine whether these two drivers share a sufficient community of interest with the Hazard and Lexington employees to warrant their inclusion in the unit. The record discloses that the Louisville facility is approximately 80 miles from the Lexington terminal and 200 miles from the Hazard location. It is approximately 120 miles from the Lexington facility to the Hazard terminal. The freight picked up by the Louisville drivers is loaded on trailers and transported from Louisville to Hazard and Lexington by drivers from those facilities. It appears that a driver from both Hazard and Lexington makes a pickup at Louisville on a daily basis. Moreover, there is some evidence that the Louisville drivers at one time delivered freight to Lexington but it does not appear that the current Louisville drivers make such deliveries.

All personnel records for employees are maintained at the Hazard facility. In addition, the payroll records are maintained at the Hazard office and all payroll checks, including those for the Louisville drivers, are dispersed out of that facility. As a result of local wage rates, the Louisville drivers are paid somewhat more than the Lexington employees who, in turn, receive slightly more than the Hazard employees. However, it appears from the record that the wage rate for all similarly classified employees is essentially the same and all employees receive identical benefits. The work of the Louisville drivers differs somewhat from that of the Hazard and Lexington employees. For example, the Louisville employees only pick up and apparently do not deliver freight and they are also responsible for loading trailers which are transported from the Louisville facility to Hazard and Lex-

ington by drivers from those facilities. Although the Louisville drivers at the current time do not have any full-time immediate supervision and work primarily on their own, the Employer is in the process of attempting to hire a terminal manager for that facility.

The cases cited by the Employer do not support its position that the Louisville drivers should be excluded from the unit. In *Bowie Hall Trucking*, supra, the Board found that the functional integration of an employer's operation did not overcome the presumptive appropriateness of the single-facility unit sought by the petitioning labor organization. Here, the Petitioner seeks a unit comprised of all similarly classified employees at the Employer's Hazard, Lexington, and Louisville facilities. The unit sought by the Petitioner is essentially employerwide. (The Employer operates a cartage service through a contractor in Cincinnati, Ohio, but does not directly employ any of the employees who provide that service.) The Employer agrees that a multifacility unit, including its Hazard and Lexington operations, is appropriate but would exclude its Louisville facility. Under these circumstances, *Bowie Hall* does not support the Employer's position that the Louisville based drivers should be excluded from the unit.

The other two cases relied on by the Employer in support of its position that the Louisville drivers should be excluded from the unit, *Baltimore Transit Co. & Baltimore Coach Co.*, 92 NLRB 1260 (1951), and *Overnite Transportation Co.*, 322 NLRB 723 (1996), are inapposite. *Baltimore Transit* sought the inclusion of a number of fringe employees to an existing unit through a self-determination election. Similarly, *Overnite Transportation* involved the issue of whether mechanics should be included in a unit of drivers and dockworkers. The Board merely found that the mechanics did not share such a substantial community of interest with the drivers and dockworkers to require their inclusion in the same unit over the objection of the petitioning labor organization. Here, the issue is not the unit placement of a different employee classification but whether the unit sought by the Petitioner encompassing the same classification of employees at the Employer's three facilities is appropriate for the purposes of collective bargaining. Under the circumstances, I find that such a unit is appropriate.

Based on the foregoing, the entire record and the arguments of the parties at the hearing and in the Employer's brief, I find that the Louisville drivers share a sufficient community of interest with the Hazard and Lexington employees to warrant their inclusion in the same unit. In reaching this decision, I note that the parties are in agreement that a multifacility unit is appropriate and the Louisville drivers appear to have as much interest with the Hazard and Lexington employees as they have with each other. Although the work performed by the Louisville employees differ slightly from that of the Hazard and Lexington drivers, they are compensated in the same manner and receive the same benefits. Moreover, the labor relations policies for all of the Employer's locations are established and administered by the Chappell family and the operations manager, James Fugate, who

hired the Louisville employees. *Purity Supreme, Inc.*, 197 NLRB 915 (1972); *Dan's Star Market*, 172 NLRB 1393 (1968); and *Mid-West Abrasive Co.*, 145 NLRB 1665, 1667–1668 (1964). Finally, the Petitioner is seeking essentially an employerwide unit which is clearly appropriate for the pur-

poses of collective bargaining. *Globe Furniture Rentals*, 298 NLRB 288 (1990); *New England Telephone Co.*, 280 NLRB 162 (1986). Accordingly, I shall include the two drivers who work at the Employer's Louisville facility in the unit.