

D&L Transportation, Inc. and CSEA, Local 760, SEIU, AFL-CIO, Petitioner. Case 34-RC-1396

August 7, 1997

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On May 17, 1996, the Acting Regional Director for Region 34 issued a Decision and Order in which he found that the petitioned-for drivers, spare drivers, bus monitors, and fuelers at the Employer's Shelton, Connecticut terminal do not constitute a separate appropriate unit from the employees at the Employer's six other Connecticut terminals located in Thomaston, Waterbury, Waterbury Special Education,¹ Woodbury, Prospect, and Seymour. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Petitioner filed a timely Request for Review of the Acting Regional Director's decision. The Employer filed an opposition. By order dated September 27, 1996, the Board granted the Petitioner's Request for Review.

Having carefully reviewed the entire record, including the Employer's brief on review,² the Board concludes, contrary to the Acting Regional Director, that the petitioned-for unit, limited to employees at the Shelton terminal, is an appropriate unit.

The Employer is a bus company engaged in providing interstate and intrastate charter bus services and local school transportation within Connecticut. Its headquarters are located in Prospect, Connecticut. The petitioned-for unit includes 46 drivers, 9 monitors, and an unspecified number of fuelers. There are approximately 369 drivers, monitors, and fuelers at all 7 locations. The drivers operate the buses, while the monitors escort passengers on to the buses, properly seat them, and then monitor the passengers' behavior. The monitors work on special education routes and are employed only at the Shelton, Waterbury Special Education, and Prospect locations. Fuelers fuel the buses, perform minor repairs and, occasionally, drive.

¹ The Waterbury and Waterbury Special Education terminals are separately located in Waterbury.

² The Employer argues as it did in its opposition to the Petitioner's request for review, that the Petitioner did not state an appropriate ground for granting review. The Employer contends that the Petitioner incorrectly relied on the Board's Notice of Proposed Rulemaking for Single Location Units (60 Fed. Reg. 50146 (Sept. 28, 1995)), because it was a proposed and not a final rule. The Employer also refers to Congressional action prohibiting expenditure of Agency funds in connection with the rule for the current fiscal year. Contrary to the Employer, it is clear that the Petitioner's request for review raises substantial issues warranting review apart from its reliance on the proposed rulemaking. In reaching its determination here, the Board does not rely on the proposed rule or any considerations therein.

The Thomaston, Waterbury, Prospect, Seymour, and Shelton terminals are located on a north to south line with the Thomaston location being the most northern terminal and the Shelton location being the most southern terminal. The Woodbury terminal is located 17 miles west of the Prospect terminal. The seven terminals are located 3 to 21 miles from the Prospect headquarters. The Shelton terminal is located 18 miles from Prospect. The distance between Thomaston and Shelton is at least 29 miles.

A single plant or store unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *J&L Plate*, 310 NLRB 429 (1993), citing *Dixie Belle Mills*, 139 NLRB 629, 631 (1962). To determine whether the presumption has been rebutted, the Board looks at such factors as central control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; and bargaining history, if any. *J&L Plate*, supra; *Esco Corp.*, 298 NLRB 837, 839 (1990), and cases cited.

In finding that the single location presumption had been rebutted, the Acting Regional Director cited the existence of uniform rules, regulations, instructions, and policies; the centralized nature of administration, accounting, hiring, training, safety practices and procedures, wages, and benefits; the regular daily interchange of drivers and equipment; the geographic proximity of the terminals; the highly interdependent nature of the Employer's operational structure; the apparent lack of autonomy of the individual terminal managers; and the common skills and functions of drivers and monitors. In reaching his conclusion, however, the Acting Regional Director recognized that the employees assigned to the Shelton terminal appeared to have a lower level of daily interchange and contact with employees assigned to other terminals, as well as a somewhat higher skill level. The Acting Regional Director, nevertheless, concluded that these factors alone did not outweigh the other factors he cited and were insufficient to establish that employees at the Shelton terminal constituted a separate appropriate unit.

Although we agree with the Acting Regional Director that the Employer has common policies and procedures and centrally administers certain aspects of its operations, we disagree with his conclusion that the evidence regarding local autonomy, common skills and functions, interchange, and geographic proximity of the terminals is sufficient to rebut the single facility presumption.

The Acting Regional Director incorrectly evaluated the degree of local autonomy at the Shelton terminal. Like most of the Employer's terminals, the Shelton fa-

cility has a local manager and a local dispatcher.³ There is no dispute that the local manager makes hiring decisions. Also, the Shelton dispatcher assigns and dispatches spare drivers to routes when regular drivers are absent. Personal absences, tardiness, and other requests for time off must be reported to the local terminal manager, according to the Employer's employee handbook, section 1.10.9, "Attendance." That section states further that drivers should "[m]aintain contact with the terminal Manager so that the necessary arrangements can be made to cover your position." In addition, the handbook gives the terminal manager "the right to challenge absences" by requesting a doctor's note or other supporting documentation. Accidents must be reported first to the terminal and any arrests to the terminal manager, although accidents are centrally investigated.

Terminal managers oversee the daily performance of drivers and monitors. If there is a minor performance problem, terminal managers may discuss the matter with the employee. Something more serious, or of a continuing nature that requires formal discipline, is discussed with, and must be approved by, the Employer's vice president for operations or another headquarters' official. Wage increases are decided by the Prospect headquarters.

In view of the local control over hiring, assignments and dispatching, time off, and minor discipline, we do not believe the headquarters' involvement in formal discipline and approval of wage increases is sufficient to rebut the presumption. Moreover, the presence of a terminal manager and a local dispatcher at the Shelton terminal is further evidence that individuals at this location are vested with significant autonomy over local terms and conditions of employment.⁴ The existence of the centralized administration and control of some labor relations policies and procedures is not inconsistent with a finding, as here, that there exists sufficient local autonomy to support the single location presumption. See, e.g., *Carter Hawley Hale Stores*, 273 NLRB 621 (1984).

In addition, there is undisputed evidence of separate skills and different terms and conditions of employment for employees at the Shelton terminal. As indicated, only three of the seven terminals use monitors. Of those three, the Shelton monitors are the highest paid. Their higher wages are attributable to the greater skills needed to care for the type of special education children transported by the Shelton terminal buses. There also is local terminal seniority. Seniority is

based on consecutive years with the Employer and it may not be transferred between locations. The employees handbook states that seniority may assist the manager in "administrative decisions," and specifically states that any route not retained by a driver at the end of the previous school year will be assigned on a seniority basis, if practical. The employee handbook further provides that seniority will be used for seasonal or permanent layoffs.

As acknowledged by the Acting Regional Director in his decision, there also is a lack of significant interchange involving the Shelton terminal. Drivers perform home to school, charter, or shuttle trips. There is no dispute that while the Employer transfers drivers among the six other terminals daily to compensate for high turnover on its home to school routes, and for the ongoing need to cover charters, the temporary transfer of drivers to and from Shelton is unnecessary. When additional drivers are needed at the Shelton terminal, the Shelton spare drivers, fuelers, dispatcher, or the manager are sufficient in number to substitute. That locations other than Shelton may have a higher or significant level of interchange with each other to accommodate the Employer's daily operations does not negate the separate community of interest shared by the Shelton drivers, who rarely interchange for this purpose. Moreover, there have been only two permanent transfers of drivers from Shelton to other locations.

There is evidence that Shelton drivers transport Shelton students to technical, private, and special education schools outside of Shelton where drivers from other terminals similarly drop off students. While this provides an opportunity for incidental contact among drivers from various locations, it is not evidence of interchange as the Employer suggests. Also, the record does not indicate the length and frequency of this contact or the proportion of Shelton drivers involved in these drop offs. Such contact, in any event, merely is incidental to the task of transporting students to a common location.

Although the Employer emphasizes the Shelton drivers' participation in its charter and shuttle operations, one Shelton driver testified that 90 percent or more of the Shelton drivers' trips involve home to school runs in Shelton rather than charter or shuttle runs. The evidence presented by the Employer regarding the number of charters involving the Shelton terminal, in any manner, is insubstantial. Less than 8 percent of all charters involve a Shelton driver or the Shelton terminal, and only three of these trips involve Shelton drivers working at another terminal.⁵ This would involve about one

³ The Thomaston and Woodbury terminals share a terminal manager and dispatcher.

⁴ Although new drivers from several locations initially are trained at one location, further training is conducted at two separate locations. Hence, the control over training supports neither a single nor a seven-terminal unit.

⁵ The Employer introduced into evidence the records of over 750 individual charters from January 1995 through a week prior to the May 6, 1996 hearing. Nearly 75 percent of the charters operated out of the Employer's Prospect headquarters using Prospect terminal drivers. Approximately 56, or less than 8 percent, involved any rela-

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charter per year for each of the 46 Shelton drivers. Further, apart from a list of participating drivers, no evidence on the overall number of shuttles involving Shelton drivers was presented.⁶ Although the Acting Regional Director found that shuttles and charters may present “ample opportunity” for contact among drivers from each terminal, like the common destinations on some home to school routes, this contact is incidental to the common task of transporting students or others to a common location. In any event, the number of these opportunities for Shelton drivers are relatively few.⁷

Based on the forgoing facts, we find that the evidence is insufficient to rebut the single facility presumption. The evidence regarding local autonomy supports the presumption as there is local control over hiring, time off, dispatching/assignment, and minor discipline.⁸ Indeed, we find it apparent that there is local

tionship between the Shelton drivers or the Shelton terminal and other locations. As indicated above, only three of these documents involved a Shelton driver actually operating from a terminal other than Shelton. Although 41 of these charters involved a Shelton driver performing charters for another terminal, the Shelton driver still operated from the Shelton terminal. The remaining 12 charters involved drivers from a different terminal performing charters for the Shelton terminal; but again, these drivers operated from their own terminal.

⁶We recognize that the Woodstock and Special Olympic shuttles involved more than contact among drivers from different terminals, as the drivers worked together at the site of each event. But these two events in two separate years are insufficient evidence to support a finding of significant regular interchange of employees between locations.

⁷Moreover, participation in charter and shuttle trips is voluntary; drivers must “sign-up” to participate. Hence, these trips are not necessarily a regular part of each driver’s job. We note that voluntary interchange, such as a permanent transfer made at the request of an employee, is given less weight in determining if employees from different locations share a common identity. See, e.g., *Dayton-Hudson Corp.*, 227 NLRB 1436, 1438 (1977). As this contact is the result of voluntary trips, it is of less significance.

⁸The dissent acknowledges the local autonomy present here and then apparently brushes it aside, because labor relations policies and procedures are centrally determined. But the existence of centralized personnel and labor policies and procedures, or even ultimate responsibility for such matters at a centralized source, does not automatically trump the acknowledged existence of local autonomy. The Board has repeatedly found single facility units appropriate despite uniform and centrally devised policies where these policies are implemented with autonomy by local managers or supervisors. See, e.g., *Courier Dispatch Group*, 311 NLRB 728, 731 (1993); *J&L Plate*, 310 NLRB 429 (1993); *Carter Hawley Hale Stores*, 273 NLRB 621 (1983); *Kapok Tree Inn*, 232 NLRB 702, 703–704 (1977). The dissent cites as an example decisions made regarding seniority which is, by centralized policy, local seniority and locally administered. The dissent ignores that the policy itself mandates local terms and conditions of employment for unit employees at each location and is locally administered. In any event, the local autonomy over the Shelton employees’ overall working conditions, together with the presence of the local manager and the dispatcher, strongly outweigh the fact that wages and formal discipline are the province of the Employer’s central management and that all other personnel policies are uniform and centrally determined.

supervision in Shelton by a terminal manager.⁹ Although the drivers at each location perform a similar function, the Shelton terminal is one of only three locations using monitors, and they are the highest paid monitors because of their skills.¹⁰ Employees at each location have separate seniority. Interchange of drivers to and from Shelton is minimal, a finding made by the Acting Regional Director which is supported by the record. Although there is the potential for contact with other drivers converging at a common destination to deliver passengers, the evidence of actual contact between Shelton employees and employees from other terminals is insignificant and, at best, incidental to transporting passengers to a common site. Moreover, the Shelton location is one of the furthest in distance from the Prospect headquarters. And the nearest terminal to Shelton, the Seymour terminal, has no monitors.

Although some factors in this case favor the broader unit urged by the Employer, on balance, we cannot say that the unit sought by the Petitioner is not an appropriate unit for collective bargaining. See generally *Overnite Transportation Co.*, 322 NLRB 723 (1996). Rather, the evidence presented does not establish that the Shelton terminal has been “so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” *J&L Plate*, 310 NLRB at 430. We conclude that the single location presumption has not been rebutted and that the Shelton terminal unit is an appropriate unit.

Accordingly, the Acting Regional Director’s decision is reversed, the petition in Case 34–RC–1396 is ordered reinstated, and the petition is remanded Region 34 for processing consistent with this decision.

[Direction of Election omitted from publication.]

MEMBER HIGGINS, dissenting.

Unlike my colleagues, and in agreement with the Acting Regional Director, I would dismiss the petition. Although there is a presumption in favor of the appropriateness of a single location unit, that presumption has been rebutted here. As the Acting Regional Director finds, the functional integration of the Employer’s operation is so substantial as to negate the separate

⁹We note that, while the ratio of employees to supervisors is only a secondary indicium of supervisory status, here the approximately 55 unit employees would be totally unsupervised at the Shelton facility were the Shelton terminal manager not found to be a supervisor. In this regard, we further note that higher managers from the Prospect headquarters visit Shelton no more than approximately once every 2 weeks, and this generally is for safety-related matters. The director of safety operations has been to Shelton 20–25 times in the past year. The Employer’s vice president for operations (who oversees all daily operations, terminal managers, and personnel matters) testified that he had been to the Shelton terminal 5–6 times in the past year. The Employer’s president visited three times during the current school year.

¹⁰In view of the undisputed higher wages and greater skills of the Shelton monitors, the dissent incorrectly lumps these Shelton monitors with monitors at two of the Employer’s other locations.

identity of the single facility unit (at Shelton) sought by the Petitioner.

The Acting Regional Director, in finding functional integration, relied on: the Employer's uniform rules, regulations, instructions and policies; the centralized nature of administration, accounting, hiring, training, safety practices and procedures, and wage and benefits; the regular daily interchange of drivers and equipment; the geographic proximity of the terminals; the highly interdependent nature of the Employer's operational structure; the lack of autonomy of the individual terminal managers; and the common skills and functions of drivers and monitors at the various locations.

My colleagues do not controvert the findings as to: uniformity of rules, etc.; centralized nature of administration, etc.; and the highly interdependent nature of the operations. They disagree only as to local autonomy, common skills and functions, geographic proximity and interchange. As shown below, except as to interchange, my colleagues are incorrect even as to these factors.

As to local autonomy, I note that important matters such as wages and formal discipline are not determined by the local manager. I recognize that hiring, assignments, dispatching, time off, and minor discipline are within the province of the local terminal manager. However, inasmuch as labor relations policies and procedures are centrally determined, it is clear that the local manager must act within controlling parameters.¹

¹ For example, the local manager makes certain decisions based on seniority, and such seniority is local. However, the labor policy of having local seniority is centrally set.

My colleagues acknowledge that labor relations policies and procedures are centrally set. They focus on the fact that some terms and conditions of employment are locally determined within the central parameters. However, I note that wages and formal discipline are the terms and conditions that are not locally set. In my view, the amount of compensation to be received, and the prospect of losing one's job through formal discipline, are among the most important of terms and conditions of employment. Thus, it is very significant that these terms and conditions are not locally determined.

With respect to skills and functions, my colleagues point to the fact that there are monitors for special education children at Shelton. However, there are also such monitors for special education children at two other locations.

As to geographic proximity, the seven terminals are located between 3 and 21 miles from headquarters in Prospect, Connecticut. Although Shelton is more distant than most, it is not the furthest away, and the mileages involved do not suggest geographic isolation.

Finally, although the other terminals have a significant amount of interchange, I concede that Shelton has less. However, this factor is insufficient to outweigh the others, discussed above, which strongly support a multifacility unit.

In sum, the Acting Regional Director has made a reasoned and well-supported decision. I would not reverse him.