

Capital Coors Co. and Chauffeurs, Teamsters and Helpers Union Local No. 150, International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 20-RC-16830

October 23, 1992

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (the relevant portion of which is attached). The request for review is denied as it raises no substantial issues warranting review.¹ The Employer's request for a stay of election is also denied.

APPENDIX

Background. The Employer has two facilities located about 90 to 100 miles or about a 2-1/2 to 3-hour drive apart—a main facility located in West Sacramento and a smaller “satellite” facility located in Truckee, California. The West Sacramento and Truckee facilities are engaged in similar distribution operations. They each have separate territorial agreements with the Employer's brewery. The geographic area assigned to the West Sacramento facility includes the following: Sacramento County; Yolo County; parts of Placer County, including Roseville and Auburn; parts of El Dorado County, including Placerville; parts of Yuba County, including Marysville; parts of Sutter County, including Yuba City; and parts of Sierra County. The geographic area for the Truckee facility includes the California side of Lake Tahoe, including North and South Lake Tahoe. The Truckee facility services ski resorts, among other customers, and its business is affected by winter road conditions in the Sierras.

The physical layout of the West Sacramento facility consists of a two-story building, two refrigerated warehouses, and storage areas. The first floor of the West Sacramento facility houses managers' offices, the lobby, the receptionist desk, drivers' room, common break room and locker room. The second floor, which is reached by stairway from the first floor, houses the clerical offices and the hospitality room.

¹ Review was requested of the Regional Director's findings that: (1) the petitioned-for, two-facility unit is an appropriate unit for collective bargaining; and (2) that the Employer's salespersons properly may be excluded from the unit found appropriate. Only the portion of the Regional Director's decision addressing the first issue is attached.

In denying review of the Regional Director's finding that the petitioned-for, two-facility unit is an appropriate unit for bargaining, we note that the presumptive appropriateness of a single-facility unit is inapplicable where, as here, the petitioner seeks to represent a multi-facility unit. *NLRB v. Carson Cable TV*, 795 F.2d 879, 886-887 (9th Cir. 1986), citing *NLRB v. First Union Management*, 777 F.2d 330, 334 (6th Cir. 1985). Cases cited by the Employer which involve petitions seeking single-facility units, including *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011 (9th Cir. 1981), are, therefore, inapposite.

The Truckee facility consists of a single building which houses administrative and clerical offices, a refrigerated warehouse, and a storage area.

Owner Adamson testified that in November 1970, when he started as a minority shareholder, vice president and general manager of the forerunner of the Employer, then called the Foster Company, the salesmen, warehousemen, draft employees, drivers and helpers at the West Sacramento location were all covered under a Teamsters Local 888 contract. Office clericals were excluded from this unit. According to Adamson, in 1973 or 1974, Teamsters Local 888 was decertified as the collective bargaining representative of employees in this unit and there have been no unions representing any employees of the Employer since that time.

The West Sacramento Facility. The West Sacramento facility employs approximately one hundred and fifty workers. The following classifications of employees are employed at the West Sacramento facility: drivers, helpers, chasers, warehousemen, recyclers, draft department employees, merchandisers, mechanics, special events employees, salespersons, and office clerical personnel. Ben Gullo is the Operations Manager of the Employer; his office, as well as those of Owner Adamson and Managers Kroucik and Webber, are located on the ground floor of the West Sacramento facility. Gullo oversees the warehousemen, recyclers, drivers, draft department employees, mechanics, helpers, chasers, and the special events employees.

Drivers. At its West Sacramento facility, the Employer employs basically four types of drivers: (1) transport drivers; (2) package route drivers; (3) van drivers; and (4) draft drivers. The transport drivers deliver bulk loads and kegs to customers such as Lucky and Seven-Eleven stores. The products are delivered in bulk and are stored and delivered on pallets with the use of a pallet jack and hand truck. Package route drivers operate a truck and trailer with 10 to 12 doors that open on the side; they utilize a hand truck to deliver the beverages off the truck into customers' stores. The product is not stored or delivered on pallets. Van drivers operate a box-type utility van or Ryder truck and deliver cases of product primarily to restaurants. Draft drivers use chilled vehicles to deliver mostly kegs to customers that have beer on tap.

Transport Driver Frank Dunn, who is employed at West Sacramento, testified that the Employer employs approximately 5 or 6 full-time transport drivers at that location; approximately 25 package route drivers; approximately 2 van route drivers; and 1 draft driver. According to Dunn, the package route and transport drivers have different starting times commencing at 5 to 5:30 a.m., with the draft and van drivers starting between 7 a.m. and 8 a.m. The drivers spend about 1-1/2 hours at the facility each day; they use the same locker room; wear identical uniforms; and handle and/or fill out the same type of documents (daily truck reports, invoices, load sheets, summaries of stops, and collection reports). Drivers receive their routes from clericals by going up the back stairs of the facility to a room with three booths. They also turn over their paperwork to clerical employees at this location when they return from making their deliveries. At the same time, the drivers put the money they have collected from customers into a drop box after it is counted by the clericals. The drivers also communicate (often via voice mail) with the accounts receivable clerks in order to determine whether money is owing on an account and whether a

delivery should be made. Dunn testified that the transport drivers are prerouted the night before. Their trucks are loaded prior to their arrival at work because their bulk loads must be placed on pallets that must be pulled from the truck in order, whereas the other drivers formulate their own routes and count their own loads to insure that nothing is missing. The drivers' trucks are loaded by the warehousemen. Transport drivers may return to the facility two times a day for additional loads; package drivers generally go out only once a day; van drivers go out once or twice a day; and draft drivers usually go out just once a day.

Drivers at the West Sacramento facility are hourly paid between \$9 and \$14.50 per hour; they punch a timeclock; they generally receive no mileage reimbursement or car allowance or commissions; they can earn overtime; and they work either a 4-day, 10-hour-a-day schedule, or a 5-day, 8-hour-a-day schedule. Dunn testified that the drivers have had incentive programs two or three times a year, mostly during holiday seasons. Under such programs, the drivers are divided into teams and a point system is utilized based on such factors as the drivers' attendance records and quality of paperwork turned in; at the end of the month, the employees on the team with the most points each receive \$100, and a pizza party is given by the Employer in their honor. Drivers (with two exceptions) are not allowed to park in the Employer's parking lot and they cannot enter the warehouse, offices, or hospitality room upstairs unless they are authorized to do so. The drivers sometimes interchange jobs as transport, package, van, and draft drivers. Dunn testified that he has worked not only as a transport driver, but also as a package, van and draft driver. Drivers attend approximately five or six "drivers" meetings a year which are also attended by helpers and chasers. Drivers also attend two or three other general meetings a year that are also attended by all other employees.

The drivers are supervised by Operations Manager Ben Gullo and they are also supervised by Shift Coordinators Tim Sevigney and Norman Alvarado, as discussed below.

Chasers and Helpers. At West Sacramento, the Employer employs approximately 10 chasers and helpers to assist the drivers in delivering the Employer's products to customers. Chasers drive company vehicles and follow transport drivers to customer locations. They help the transport drivers unload and break down the pallets of the product. A helper performs a similar function for package route drivers except that the helper rides with the driver in his or her truck. The chasers and helpers work the same hours as the drivers. Full-time helpers and chasers earn \$8 an hour and part-time helpers and chasers earn \$6 to \$7.50 per hour. Helpers work as chasers and vice versa and both chasers and helpers also sometimes perform warehouse work. Helpers and chasers are supervised by Sevigney and Alvarado and by Gullo.

Draft Department Employees. There are four employees in the draft department, including one or two draft drivers. The draft driver(s) deliver draft beer to bars and restaurants that have beer on tap. The other draft department employees operate company vehicles to deliver products to customers, clean and repair draft beer taps, and install draft equipment for customers. Draft department employees are hourly paid and earn between \$8.40 and \$11.45 per hour. They also sometimes work with the drivers as chasers and helpers. Draft department employees report to Ben Gullo.

Warehousemen and Recyclers. The Employer employs approximately 25 warehousemen and one recycler. Warehousemen operate forklifts and load and unload products from trucks and from railroads cars. The warehousemen earn between \$6.50 and \$15.45 per hour. They work on three shifts. Warehousemen rarely perform other types of work. The recycler, who works in a booth near the front gate of the West Sacramento facility, weighs and purchases aluminum cans and glass brought in by members of the public. He also operates a machine that crushes aluminum cans and glass. The recycler (Ray Macias) earns \$7.25 an hour and works Tuesdays through Saturdays. Macias has also worked in the warehouse, although he does not do so very often. On Mondays, Warehouseman Moses Sanchez performs the recycler's job; Sanchez works in the warehouse on other workdays. The warehousemen and the recycler report to Warehouse Manager Steve Gula, who is stipulated to be a supervisor and/or manager under the Act. Gula, in turn, reports to Gullo who oversees the warehouse operation.

Merchandisers. There are approximately ten to fifteen merchandisers at the West Sacramento facility. Merchandisers operate company vehicles, stock customer shelves with products, and build and tear down displays of the Employer's products at customers' facilities. They may sometimes drive their own vehicles if there are no Employer vehicles available. Merchandisers earn \$6 an hour. They are supervised by Sales Manager Webber, who is stipulated to be a supervisor and/or manager under the Act. Merchandisers also occasionally work as chasers or helpers. In addition, Dunn testified that Merchandiser Jess Abarca has worked as a recycler.

Salespersons. Approximately thirty salesmen are employed at the Employer's West Sacramento facility. The salesmen sell products to customers, they may stock shelves, and some of them put up and tear down displays. Dunn testified, however, that most of the salesmen do not perform such physical labor but instead leave notes for the merchandisers or helpers to do so. Salesmen are salaried (\$26,000 to \$37,000 a year), and are paid a commission, as well as a monthly allowance of about \$375 for reimbursement of the costs associated with using their own vehicles to perform their work. They must telephone their orders from customers into the warehouse between 3 and 5 p.m. each day so that the warehousemen can load the products for delivery the next day. On a daily basis, the salesmen and drivers use their mail boxes at work to exchange notes with each other regarding such matters as customer needs or problems, amounts owing from customers, and other matters. Sales Manager Webber supervises the salesmen. As indicated above, the parties have stipulated that Webber, the sales district managers, the director of sales and marketing, Dale Kroucik, and sales planning and analysis director Kelly Shelton are supervisors under the Act who should be excluded from the unit.

Clerical Employees. The clerical office personnel include two accounts receivable clerks, one accounts payable clerk, one payroll clerk, one order desk clerk, two research employees, two to three computer operators, one receptionist, and one inventory control clerk. Owner Adamson testified that the clericals are cross-trained in each others' jobs. The office clerical employees (except Russ Gerrig and Office Manager Howell) are hourly paid and earn between \$7.75 and \$12 an hour. They are permitted to park in the Employer's parking lot. The office clerical employees are supervised by Office

Manager Jana Howell, who has her desk in the second floor office area at the West Sacramento facility.

Special Events Employees. Dave King, the special events supervisor, is the only full-time employee in the special events department. In addition to King, there is one part-time special events employee, Paul Blakely. King and Blakely deliver products to special events, such as fairs, festivals, and rodeos; they install banners and posters; and they deliver special trailers with taps and spouts to special events sites. King is salaried and earns \$1153.85 bi-weekly. Blakely is hourly paid and earns \$6 an hour. These employees report directly to Gullo.

Mechanics. The Employer employs three mechanics in its repair shop. The mechanics maintain and repair the Employer's fleet of vehicles and other equipment, such as trailers, forklifts and automobiles. It is rare for mechanics to be involved in making deliveries but they may do so if a driver's vehicle is broken down. The lead or senior mechanic, John Cole, is salaried and is paid \$1430.40 on a bi-weekly basis. As indicated above, the parties are in agreement, and I find, that Cole is an employee who should be included in the unit. The mechanics, including Cole, report to Gullo.

All drivers, helpers, chasers, merchandisers, draft employees, warehousemen, special events employees and recyclers wear the same type of uniform; they punch in at the same time clock; they are not (with two exceptions) allowed to park in the Employer's parking lot as are the clerical employees and salespersons. Salespersons do not wear uniforms; they drive their own vehicles; they are paid salaries, a commission, and a car allowance. They are not required to report to the office and they do not punch a time clock. They attend separate sales meetings and special events not attended by the drivers or other employees. The salesmen do have contact with other employees at general employee meetings held two times a year and at Employer picnics. All West Sacramento employees receive similar benefits and use the same break room.

The Truckee Facility. The Truckee facility employs about 12 employees in the following classifications: 2 salespersons, 2 warehousemen, 3 drivers, 1 relief driver, 1 merchandiser, 1 clerical employee, and 1 employee who spends about half his time selling and half his time merchandising. Branch Manager Bill Feckers is in charge of the facility and he is stipulated by the parties to be a supervisor under the Act.

The Truckee facility does not employ any recyclers, draft employees, special events employees or mechanics. The trucks utilized by the Truckee facility are all leased from a separate leasing company called Ryder, and Ryder provides any repair services that are necessary. The drivers at Truckee work schedules similar to those at West Sacramento and they earn between \$7 and \$10.75 an hour; warehousemen earn between \$7 and \$8 an hour; and the one clerical employee earns \$10 an hour.

Owner Adamson and West Sacramento Driver Frank Dunn testified that the West Sacramento drivers haul bulk loads of beer to the Truckee facility about once or twice a week. Dunn testified that when he hauls a load to Truckee, he interacts with the clerical there and with Warehouseman Dave Tamiath. The West Sacramento drivers unload their bulk loads at Truckee, sometimes with the warehouseman's help, and they collect empty bottles to return to their own facility. The West Sacramento drivers also temporarily trans-

fer to Truckee to help make deliveries when that facility is short-handed or is very busy. Owner Adamson likewise testified that if employees at Truckee are injured, on vacation, or ill, the Employer sends someone from its West Sacramento facility to substitute for them. Dunn testified that in 1992, he had hauled beer to Truckee about 12 times and had temporarily gone there to work on three occasions for about a week each time.

According to Dunn, he sometimes drives a vehicle rented from Ryder at Truckee and he sometimes takes an Employer-owned vehicle from West Sacramento to Truckee for use at that facility. The work he performs at Truckee is the same type of work that he performs at West Sacramento. Dunn likewise testified that the warehousemen at Truckee are performing similar work and using similar equipment as the warehousemen at West Sacramento.

Owner Adamson testified that the Truckee facility was purchased in approximately May 1982. According to Adamson, Branch Manager Feckers is in charge of the Truckee facility and Feckers reports to Sales Manager Kroucik, whose office is at the West Sacramento facility. Adamson testified that Feckers has independent authority to discipline, terminate, and to hire employees at Truckee but "[h]e normally would call somebody just for a second opinion. He might call me." Adamson testified that Kroucik visits the Truckee facility approximately once a month and that he (Adamson) does so somewhat less often. Feckers also visits the West Sacramento facility whenever a new product is being introduced. According to Adamson, the Truckee facility has the same distributing function as does the West Sacramento facility although it is smaller and its business is more seasonal. Adamson further testified that the Truckee facility is run according to the same standards as the West Sacramento facility. The policy and training manuals used at Truckee are the same as those used at West Sacramento.

The wage rates of the Truckee employees differ somewhat from that of employees at the West Sacramento facility; drivers at Truckee earn between \$7 and \$10.75 an hour as compared to drivers at West Sacramento, who earn between \$9 and \$14.50 per hour; the clerical employee at Truckee earns \$10 an hour; warehousemen earn \$7 to \$8.50 an hour at Truckee as compared to those at West Sacramento, who earn between \$6.50 and \$15.45 an hour. The salesmen receive a different commission but their mileage allowance is the same at both facilities.

The employees' fringe benefits are essentially the same at both facilities with the exception that Truckee employees get a floating holiday instead of an established holiday at Christmastime which is given to the West Sacramento employees. Personnel files for both Truckee and West Sacramento employees are kept at the West Sacramento facility. The West Sacramento facility also processes timecards and attendance slips for the Truckee facility and generates its payroll. Payday occurs on the same day for both facilities. The accounts receivable and accounts payable work for Truckee is handled by the West Sacramento facility; the drivers at Truckee call Sacramento for information on their accounts receivable. Adamson and the inventory control clerk at West Sacramento handle a lot of the ordering for the Truckee facility. Adamson testified that the Employer keeps a "separate financial" on the Truckee operation and Truckee has a separate bank account. Although accounts payable are handled out of West

Sacramento, deposits are made in Truckee; the Employer transfers funds from its Truckee account to its West Sacramento bank account and then pays Truckee's bills out of that account.

Analysis: Whether the Scope of Unit Should Include Employees at Both the West Sacramento and Truckee Facilities. As stated above, the Petitioner seeks to represent employees at both the Employer's West Sacramento and Truckee facilities. The Employer takes the position that employees at the Truckee facility are not properly included in the unit.

The Board determines whether a multilocation or single location unit is appropriate based on its evaluation of the community of interests among employees working at the different locations, including: (1) similarity in employee skills, duties, and working conditions; (2) functional integration of the business, including employee interchange; (3) centralized control of management and supervision; (4) geographical separation of facility and extent of union organization; and (5) employee choice. *NLRB v. Carson Cable TV*, 795 F.2d 879 (9th Cir. 1986).

Applying the foregoing principles, it is concluded that there is a sufficient community of interest to warrant including the Truckee employees in the unit with employees at the West Sacramento location. Thus, despite the 90-mile physical separation of these two facilities, their separate immediate

supervision, and the differences in pay rates, the function of both facilities is the same; both are owned by the same Employer; the overall supervision is the same; the work and skills of the employees at both facilities are essentially the same; employees from West Sacramento do interchange with those at Truckee and they have contact with each other on a regular basis; employee rules, payroll, the ordering of merchandise, and certain other functions are centrally controlled at West Sacramento; and (with one exception) employee fringe benefits at both facilities are the same. The evidence of bargaining history that dates prior to 1973 or 1974 at the Employer's West Sacramento facility does not require a different result. See *Esco Corp.*, 298 NLRB 837 at 839 (1990). Finally, it is concluded that *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1014 (9th Cir. 1981), cited by the Employer, is not controlling herein. In that case the Union petitioned for separate units at the two locations involved and the issue was whether each of those separate units could constitute an appropriate unit or whether the only appropriate unit was one that included employees at both locations. Here, by contrast, the Petitioner is seeking to represent employees at both employer locations in a single unit and the issue is whether that unit constitutes an appropriate unit.

Accordingly, the unit herein will include employees at both facilities.