

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

COCA-COLA BOTTLING COMPANY OF OREGON

Employer

and

Case 36-RC-6388

TEAMSTERS LOCAL UNION NO. 206  
affiliated with the INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions.<sup>1</sup>

**I. SUMMARY**

The Employer is engaged in the business of the bottling and distribution of various beverage products throughout the United States, including North Bend, Oregon, the only facility involved herein. The Petitioner filed the instant petition seeking to represent a unit of all employees working out of the Employer's North Bend distribution and warehouse facility, in the job classifications of driver merchandisers, merchandisers, order builder, account managers, and the route process administrator, essentially a plant-wide unit.<sup>2</sup> However, the Employer contends that the petitioned-for-unit is too broad in that the account managers and the route process administrator do

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<sup>1</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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. The labor organization involved claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>2</sup> There are 4 driver merchandisers, 7 merchandisers, 1 order builder, 2 account managers and 1 route process administrator, for a total of 15 employees in the petitioned-for-unit. Neither party seeks to include the District Sales Manager, the lone supervisor at the facility in question. Therefore, I shall exclude the District Manager from the unit. Further, neither party asserts that the account managers are managers or supervisors within the meaning of Section 2(11) of the Act.

not share a sufficient community of interest warranting their inclusion in a unit with the driver merchandisers, order builder, and merchandisers. The parties stipulated that any appropriate unit should include driver merchandisers, merchandisers and the order builder.

Based on the record evidence, arguments of the parties at both the hearing and in their post-hearing briefs, I find that the Employer has failed to rebut the presumption in favor a plant-wide-unit in the circumstances of this case. Accordingly, I shall direct an election in the petitioned-for-unit.

Below, I have set forth the record evidence that forms the basis for my decision, as well as the legal standards the Board utilizes in determining the appropriateness of a petitioned-for-unit. Following the record evidence and analysis sections of this Decision, is my conclusion, direction of election, and procedures for requesting review of this decision.

## **II. RECORD EVIDENCE**

### **A. The Employer's Operations**

There are five sales centers which make up the Oregon market unit of Coca-Cola of Oregon, whose territory ranges from Woodland, Washington to Eureka, California. These centers are: Woodland, Washington; Portland, Eugene, and Medford, Oregon; and Redding, California. The Employer's North Bend, Oregon facility, at issue herein, is a satellite of the Medford sales center. Jeff Anderson is the District Sales Manager of the North Bend facility. Anderson's responsibilities are to manage product sales out of the North Bend facility and to supervise all employees employed at or out of the North Bend facility. Anderson reports to Craig Ault, who is the Sales Center Manager. Ault works out of the Employer's Medford, Oregon location and reports to Matt Wilson, who is the Marketing and Vice President of the Oregon market unit.

The territory served by the North Bend facility includes the town of Florence, Oregon, located about an hour north of North Bend, and south to the town of Brookings, Oregon, and southeast to Coquille and Myrtle Point, Oregon. The Employer's facility services three types of customers: supermarkets, convenience retail, and deli outlets, referred to as "cold drink" outlets. Employees working out of the North Bend facility work together to sell and deliver Coca Cola and other beverage products to customers within the facility's market territory.

### **B. Relevant Community of Interest Factors**

#### **1. Wages, Hours, and other Working Conditions**

##### **Account Managers**

Account managers Kevin Caporale and Tami Niles work full-time, Monday through Friday, approximately 8-9 hours per day. The account managers arrive at the North Bend facility at either 5:00 am or 6:00 am, alternating every other week on their start times. The account manager who arrives at 5:00 a.m. unlocks the facility, lets the driver merchandisers into the facility and checks the drivers out so they can begin their routes.

Account managers earn a salary of about \$3,000 per month and are entitled to trimester incentive bonuses up to \$2,700 per trimester. Thus, the account managers could earn a little over \$36,000 per year in base pay, \$8,100 per year in bonuses, for a little over \$44,100 in total pay. The record is silent as to the actual (including incentive pay) earnings of the account managers. I note that three of four driver merchandisers earn \$37,461 per year, ( $\$18.01 \times 40 \text{ hours per week} \times 52 \text{ weeks per year}$ ), while the fourth driver merchandiser earns \$37,086 per year ( $\$17.83 \times 40 \text{ hours per week} \times 52 \text{ weeks per year}$ ).

After meeting with the drivers early each morning, account managers typically meet with the merchandisers at about 6:00 am to discuss any special instructions for the day related to building point of sale displays, rotating product and cleaning up back stock. After the merchandiser meeting, account managers typically go out into their respective market using vehicles provided to them by the Employer, and take orders on a daily basis from a set list of customers that they handle in their respective market areas. In addition to taking orders at their respective accounts, account managers also try to sell new products to their customers and advise them about new promotions and ensure point of sale material is properly displayed. Account managers are not obligated to return to the facility at the end of the day, as they are able to transmit orders via a "POE" or pocket order entry device.

#### Driver Merchandisers

The Employer's four driver merchandisers work four 10 hour shifts Monday through Friday from about 5:00 a.m. to 3:00 - 4:00 p.m. They earn within the range of \$17.83 - \$18.01 per hour. The driver merchandisers arrive at the North Bend facility in the morning, meet with the account managers, pick up their loads and deliver products to customers using company provided vehicles. Customer accounts include grocery stores, convenience retail stores and vending machines.

With respect to vending machines, driver merchandisers handle such when working as a full service driver, which takes place once per week. Further vending machine work involves a driver filling the machines with product and retrieving money from those same machines. If a driver delivers to a grocery store, he/she will drop off the product and pick up the empties and shells. If the product is delivered to a convenience retail store, the driver is also responsible for placing the product in coolers, delivering any merchandising or point of sale material, and collecting monies from the customer. Upon returning to the North Bend facility at the end of their route, the driver will check in with the order builder, and print out a "load-in-document," verifying what has been returned on the route such as empty shells and damaged product. After the truck has been checked in, the driver merchandiser will then meet with the route process administrator, and provide collected monies to her. Once the monies are recorded, they are returned to the driver merchandiser, who must then deposit the funds at the bank. On occasion, driver merchandisers will work in the warehouse as vacation relief for the order builder and earn that position's lower rate of pay. One employee, driver merchandiser, Thomas Hand, performs dual functions as a driver merchandiser and as a merchandiser and, additionally, works vacation relief for account managers. Approximately once or twice a month, driver merchandisers will notify

Manager Anderson or one of the account managers about the potential for new product sales.

### Merchandisers

The rate of pay for the Employer's seven merchandisers varies with two merchandisers earning \$9.00 per hour, four earning \$12.14 per hour and one earning \$13.27 per hour. The merchandisers as a group work 7 days per week, but five of the seven, individually work 5 days a week from 6:00 a.m. to about 2:00 or 3:00 p.m., while two other merchandisers work 4 days per week. Merchandisers typically meet with the Account Managers at 6:00 a.m. at the facility to discuss specific projects regarding the building of point of sale displays and rotation of product. Merchandisers each service a designated route and are responsible for stocking shelves at supermarkets with beverage products, building displays with point of sale material, and keeping the back stock in stores clean, organized and well-rotated. Merchandisers use their own cars to service their routes, but are reimbursed by the Employer based on mileage driven. Approximately once or twice a month, merchandisers will notify Manager Anderson or one of the account managers about the potential for new product sales. At times, merchandisers work in the warehouse, and when they do so, they are paid at the warehouse or order builder rate of pay.

### Order Builder

The main function of the order building is to build beverage orders for the driver merchandisers using a pallet jack or lift product. This is a full time (40 hours per week, 10 hours per day) position, with a current wage rate of \$14.42 per hour. The order builder currently works Monday, Tuesday, Thursday and Friday. The order builder accesses a computer program called "POD" and prints out loads from this program allowing the order builder to build orders for the day, taking into account how many trucks he has to prepare orders for, the contents of the order, and the sequence of the trucks. The order builder also handles merchandise coming into the warehouse, checks transport trucks that he is unloading for discrepancies, and checks with drivers who are returning from the day's deliveries by verifying merchandise on the returning truck.

### Route Process Administrator

The route process administrator,<sup>3</sup> Kim Black, works 20 hours per week, from 1:00 p.m. - 5:00 p.m., Monday through Friday and earns \$12.23 per hour. Black's daily tasks include checking and responding to electronic mail, answering phones, and returning or referring national help desk line questions or customer order requests. Black also performs a route summary listing all locations visited by driver

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<sup>3</sup> The new title for this position was created in January 2006. Kim Black was the incumbent in this position. New tasks such as verification of inventories were added to this position in January 2006, in an effort to comply with Sarbanes-Oxley guidelines for reporting profits and assets of publicly held corporations, which emerged after the Enron debacle.

merchandisers upon their return to the office, and verifies all cash turned in by drivers for cash accounts, while returning the money to the drivers, under seal, for deposit to the bank. Black uses computer programs called "BASIS" and "SAP", to ensure that there is a proper accounting of the inventory in the warehouse and products being delivered by drivers. The route process administrator fills out time variance reports for various employees who fail to properly clock in, which reports are then approved by Manager Anderson, returned to Black, and then inputted by her into the computer time-keeping program, Kronos. Black further tracks the time worked by driver merchandisers and merchandisers in the warehouse to ensure they are compensated at the order builder rate of pay. Black additionally inputs the merchandiser mileage documentation log into the computer system after it has been reviewed and approved by Manager Anderson. On Wednesdays, Black arrives at noon and performs an inventory of the warehouse products using a handheld device. Finally, Black performs inventory reconciliation on the last Friday of the month. Inventory is transmitted to the Employer's computer system and Black reviews an ensuing report for discrepancies.

#### Other working conditions

All full time employees of the Employer are eligible for vacation benefits, jury duty pay, bereavement leave, 401K and Employer pension program, holiday pay, health care benefits, sick leave benefits and tuition benefits. The part-time route process administrator is not eligible for health care, sick benefits or tuition benefits, but is eligible for the remainder of the benefits, with vacation time, jury time and bereavement leave paid on a prorated basis. Driver merchandisers, merchandisers and the order builder all wear uniforms consisting of dark grey slacks, and lighter gray collared shirts bearing the corporate logo. While account managers are not required to wear this uniform, they are provided with company polo shirts. The route process administrator does not wear a uniform. The company provides cell phones to its employees who work on the road for communication purposes, namely, the driver merchandisers, merchandisers and account managers.

#### 2. Commonality of Supervision

All employees working out of the North Bend facility report directly to Jeff Anderson, District Sales Manager of the North Bend facility. Anderson is responsible for hiring, interviewing and appraising employees. Anderson is the only supervisor at the Employer's facility. Anderson reports to Craig Ault, Sales Center Manager, who is based out of Medford, Oregon.

#### 3. Degree of Skill and Common Functions

All categories of employees, save the order builder, have some contact with the Employer's customers. While account managers, driver merchandisers and merchandisers interact in person with customers on their routes on a daily basis, the route process administrator's contact with customers is limited to phone contact, computer contact, e-mail and mail correspondence. All categories of employees have direct contact with the product. The order builder, driver merchandisers, merchandisers, and account managers physically manipulate the Employer's end product for transport, by either lifting it, using a pallet jack, a

forklift, or a dolly. The route process administrator conducts a physical inventory of the beverage products in the warehouse on a weekly basis.

Driver merchandisers, merchandisers and account managers as a condition of employment, must possess a valid class A driver's license and have a driving record within MVR policy guidelines. Merchandisers must also carry current vehicle liability insurance and must be able to use a personal vehicle during business hours. Additionally, merchandisers, account managers and the order builder must also be able to lift 50+ pounds. Account managers and the route process administrator are required to have a high school diploma or possess a GED (General Equivalency Degree), although college experience or a degree is preferred. While a high school degree is preferred for employees working in the remaining job classifications, it is not required.

A background in the beverage industry or prior grocery store experience is a preferred condition of employment for account managers, driver merchandisers, and merchandisers, while prior warehouse experience is a plus for the order builder position. The route process administrator must possess 2-5 years experience in an automated office environment and, preferably, experience with the BASIS route accounting system and in a cash room environment.

#### 4. Frequency of Contact and Interchange with other Employees

As discussed above, account managers interact in person, Monday - Friday, initially with the driver merchandisers in order to check the drivers out so they can begin their routes, and later with merchandisers in order to review display set up, product rotation, and special projects. These three categories of employees also utilize company provided cell phones to interact with each other regarding product and point of sale issues that arise throughout the day at various customer locations. The order builder interacts with the driver merchandiser every day upon the drivers' return to the facility by verifying and inventorying product brought back on the trucks. The driver merchandisers similarly interact on a daily basis with the route process administrator when the drivers provide the route process administrator with a route summary listing all locations visited by drivers, and when they provide all cash turned in to them from cash accounts. These monies are verified by the route process administrator, who then returns the funds to the drivers for bank deposit. When a payroll variance occurs, the route process administrator interacts with employees to find out what the proper payroll entry should be and inputs the appropriate entry into the KRONOS payroll system, after supervisory approval.

With respect to interchange, merchandisers and delivery merchandisers fill in for the order builder during vacation relief, and on Wednesdays when the order builder is not working at the facility. When this occurs, they are paid at the order builder rate of pay. The route process administrator tracks this variance and pay is adjusted

accordingly. As noted above, employee Hand performs dual functions as a driver merchandiser and as merchandiser in addition to vacation relief for account managers.<sup>4</sup>

#### 5. Functional Integration

The Employer's beverage delivery and sales system is highly integrated. Beverage products are delivered to the Employer's facility where the products are unloaded by the order builder who then builds loads for the driver merchandisers based on customer orders generated in part by the account managers, as well as customer calls and inquiries taken by Manager Anderson, account managers, and the route process administrator. Account managers, delivery merchandisers and merchandisers all work together to ensure that the proper level of product inventory is maintained at customer locations and that sales of the product is properly supported by point of sale material, the proper display and rotation of product, while ensuring damaged or expired product is removed and tracked. The route process administrator performs an extra check of inventory levels once a week as well as on a monthly basis. Monies collected from sales of product are delivered by the driver merchandisers on a daily basis to the route process administrator, who records the amounts and returns them to the drivers for deposit.

#### 6. Bargaining History

There is no history of collective bargaining in either the petitioned-for-unit or the unit proposed by the Employer at the Employer's facility. However, testimony was presented that Teamster contracts exist in the Employer's Portland, Eugene, Medford, Redding, and Eureka facilities. At these locations, the bargaining units are comprised of merchandisers, delivery drivers, and warehouse loaders. None of these units include the classification of account managers or route process administrators. The record is silent with respect to whether the job functions of the various categories of employees at the Employer's other facilities are divergent from those at the North Bend location.

### III. ANALYSIS

#### A. Placement of Account Managers

Section 9(b) of the Act does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192 fn. 1 (1965); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf'd. 190 F.2d 576 (7<sup>th</sup> Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). Thus, there is ordinarily more than one way in which employees of a given employer may appropriately be grouped for

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<sup>4</sup> It is apparent that the parties agree to the inclusion in the unit of the dual function position in which Hand is employed. Accordingly, I shall include that dual function position in the unit found appropriate herein.

purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4<sup>th</sup> Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10<sup>th</sup> Cir. 1962).

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for-unit. The burden is on the party challenging the unit to show that the petitioned-for-bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988); *Bartlett Collins Co.*, 334 NLRB 484 (2001). Thus, in the instant matter, the burden is on the Employer to demonstrate that the unit sought by the Petitioner is inappropriate. Moreover, in the instant case, the Petitioner is seeking a plant-wide unit, which is "...presumptively appropriate under the Act, and a community of interest inherently exists among such employees." *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962).

In examining whether a community of interest exists among such employees, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees, and functional integration. *Kalamazoo Paper Box Corp.*, at 137; *Brand Precision Svcs.*, 313 NLRB 657 (1994); *Ore-Ida Foods*, 313 NLRB 1016 (1994), aff'd 66 F.3d 328 (7<sup>th</sup> Cir. 1995); *The Boeing Company*, 337 NLRB 152 (2001). The Board generally looks to the totality of the circumstances or the overall community of interest in making unit determinations. *Johnson Controls, Inc.*, 322 NLRB 669 (1996).

I find the overwhelming community of interest exists between the account managers and the other categories of employees in the petitioned for unit. This determination is based on the same benefits,<sup>5</sup> common supervision; similar skill base and function<sup>6</sup> in the Employer's operation, frequent contact, some interchange; and the high degree of integration that exists between the employees in the plant-wide unit. While I note that the account manager positions are salaried, rather than hourly, the account managers earn about the same base pay per annum as the driver merchandisers, whom the parties stipulated should be included in the unit. Moreover, differences in methods of compensation, such as commissions paid to sales representatives, are an insufficient basis for the exclusion of a group of employees where other community of interest factors is present. *Wilson Wholesale Meats Company*, 209 NLRB 222 (1974).

The Employer cites *Plaza Provision Company*, 134 NLRB 910 (1961), in support of its position that the account managers should be excluded from the unit because of

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<sup>5</sup> I do note that while the part-time route process administrator shares the majority of the same benefits as the remainder of the employees in the petitioned-for-unit, her benefits are more limited.

<sup>6</sup> While I note that the Employer argues that account managers are sales employees and perform a different function than delivery employees, testimony adduced at the hearing indicated that account managers do not make any cold sales calls, but rather take orders on a daily basis from a set list of customers that they handle in their respective market areas and service these accounts. While it is the responsibility of account managers to introduce or "sell" new products to their existing customers, sales leads are also generated by the driver merchandisers and merchandisers on a bi-monthly or monthly basis.



the diversity of interests between their main function as sales employees and employees who deliver product or work in the warehouse. In *Plaza Provision Company*, the route and special salesmen had no interchange with the warehousemen and truck drivers, and were excluded from the unit. In the instant case, account managers interact on a daily basis with driver merchandisers and merchandisers, and Hand, the dual function employee, substitutes for an account manager while that manager is on vacation. Moreover, in *Plaza Provision Company*, the Board had to place the route and special salesmen into one of two previously certified units: one of salesmen and the other of production and maintenance employees, including warehousemen, checkers, inventory clerks, janitor, truck drivers and special and route salesmen. In the instant case, the Petitioner is not seeking placement of employees into one of two units, but rather, is seeking a plant-wide unit, and a community of interest among the plant-wide employees is inherent. *Kalamazoo Paper Box Corp.*, *supra*.

The Employer also cites *Spartan Department Stores*, 140 NLRB 608 (1963), for the proposition that bargaining patterns at other plants of the same employer, although not considered controlling in relation to determining the appropriate unit at a particular plant, has been recognized as a factor to consider in a unit determination. Here, evidence was presented that Teamsters bargaining units exist at six facilities within the Oregon sales center, which units are comprised of merchandisers, delivery drivers, and warehouse loaders. Insufficient testimony was adduced at the hearing regarding the specific categories of, and the community of interest between, employees who work in the Employer's other facilities, such that their unit placement at other facilities has any weight in rebutting the presumptively appropriate facility-wide unit petitioned for herein.

#### B. Placement of Route Process Administrator

The same community of interest standard applied above to the account manager position applies to the regular part-time route process administrator position. As with the account managers, I find that the plant-wide community of interest inherently exists between the route process administrator and the other categories of employees in the plant-wide unit. In particular, the route process administrator's hourly rate of pay is similar to that of the merchandisers, she has the same supervisor as the other categories of employees, she has daily contact with the driver merchandisers, she has regular contact with customers as do the driver merchandisers, merchandisers and account managers, albeit not in person contact, and she regularly rotates through the warehouse attending to inventory on a weekly and monthly basis.

The Employer argues that the route process administrator should be excluded from the plant-wide unit because she does not share a sufficient community of interest with the other unit employees. In particular the Employer cites *Trumbull Memorial Hospital*, 338 NLRB 900 (2003), in arguing that the administrator's benefits are sufficiently divergent from that of the other categories of employees such that she lacks a community of interest with them. As an initial matter, the route process administrator is entitled to the majority of the same benefits that are provided to the other employees working out of the North Bend facility. These benefits are vacation benefits, jury duty pay, bereavement leave, 401K, the Employer pension program and holiday pay, with vacation time, jury time and bereavement leave paid on a prorated basis, and holiday pay paid if her work day falls on a holiday. Only three benefits out of the

eight (health care, sick leave and tuition benefits) are not available to the route process administrator. In *Trumbull*, the Board reversed a Regional Director's finding that a group of TAS business clerical employees had a sufficient community of interest with a group of TMH business clerical employees. The Regional Director had relied principally on the factor of common supervision of the two groups, in finding that the two groups shared a sufficient community of interest. However, the Board reversed this finding, stating that it was not sufficiently supported by the record. See *Trumbull* at 901. Additionally, the Board noted that the two groups received dissimilar wages and benefits, and specifically noted that the TAS employees were not covered by TMH's retirement plan, hospitalization plan, vacation policies, disciplinary rules, seniority rules, or by job posting rules. *Id.* at 901. In short, the two groups of employees had no common benefits or wages. Contrast the facts in *Trumbull* to the instant case, where the route process administrator is provided with the majority of benefits available to the remainder of the petitioned-for-unit of employees, she additionally shares similar wages with the merchandisers and enjoys common supervision with the remainder of the petitioned-for unit employees in the presumptively appropriate wall-to-wall unit. See also *Huckleberry Youth Programs*, 336 NLRB 1272, 1274 (1992) (employer decision to limit certain benefits to full-time employees insufficient basis for finding part-time employees lack a community of interest with full-time employees).

Finally, the Employer argues that as a matter of public policy, the Board should not include the route process administrator in the bargaining unit, because it gave additional job duties to this individual, such as reconciling cash accountability, entering employee time entries into the payroll system and inventorying goods, in an effort to comply with the spirit of Sarbanes-Oxley Act guidelines for reporting profits and assets of publicly held corporations, which emerged after the Enron debacle. Although the route process administrator serves as a first line auditor on several of the day-to-day functions of the North Bend facility, her work is reviewed by the District Manager, and her audits are also audited internally by an Employer auditor twice yearly. Thus, the route process administrator does not serve as a truly independent auditor. Further, absent the existence of any established case law stating that a person performing certain tasks created in an effort to comply with the spirit of the Sarbanes-Oxley Act, should not be placed in the petitioned for plant-wide unit, I am bound by Board precedent, and will include this position in the Unit.<sup>7</sup>

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<sup>7</sup> While acknowledging that the Board has not addressed this issue, the Employer cited the Regional Director's decision in *Wolverine Tube, Inc.*, 17-RD-1697 (Sept. 8, 2004), in support of its contention that the Director relied on an employer's argument that assumed positions performing duties to comply with Sarbanes-Oxley were not appropriate for inclusion in a bargaining unit. However, the issue before the Regional Director in *Wolverine Tube, Inc.*, was whether sufficient evidence was presented to support the contention that two employees had a reasonable expectation of recall to their full-time unit positions. There, the Regional Director did not make any findings regarding the placement of employees into our out of the unit based upon the employees' performance or non-performance of duties created or taken away from them by the employer due to its concerns with compliance with the Sarbanes-Oxley Act. Rather, the Director merely found that the Employer's future plan regarding a change in employee duties was one of three objective factors to be weighed in determining that the employees did not have a reasonable expectation of recall to their unit positions. Moreover, Regional Director decisions lack precedential value. *Rental Uniform Service*, 330 NLRB 334 (2000).

Thus, I find that the Employer has not overcome the presumption that an inherent community of interest exists among the petitioned-for plant-wide unit of employees involved herein. Further, I find that the account managers and route process administrator share an actual community of interest with the other categories of employees sought in the petitioned-for-unit. Moreover, I note that excluding the route process administrator from the unit would result in a residual unit of one employee, a result the Board has long found to be undesirable. *Gateway Equipment Co.*, 303 NLRB 340, 342 (1991).

#### **IV. CONCLUSION**

In light of the above and the record as a whole, I find that, the unit below is an appropriate unit for purposes of collective bargaining. Thus, I shall direct an election in the following appropriate unit (hereinafter "Unit")

All full and regular part-time account managers, driver merchandisers, merchandisers, order builders, and route process administrators employed by the Employer at or out of its North Bend, Oregon facility, excluding all guards and supervisors as defined by the Act.

There are approximately 15 employees in the Unit found appropriate.

#### **V. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local Union No. 206, affiliated with the International Brotherhood of Teamsters.

##### **A. List of Voters**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to

communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Acting Officer-in-Charge for SubRegion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The SubRegional Office shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Subregional Office, 601 SW Second Ave., Suite 1910, Portland, OR 97204-3170, **on or before June 21 2007**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of four copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

#### B. Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### VI. **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **5 p.m. EDT on June 28 2007**. The request may be filed through E-Gov on the Board's web site, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.<sup>8</sup>

**DATED** at Seattle, Washington, this 14<sup>th</sup> day of June, 2007.

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<sup>8</sup> To file a request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, [www.nlr.gov](http://www.nlr.gov).

/s/ Catherine M. Roth  
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