

**Novato Disposal Services, Inc. and International Brotherhood of Teamsters, Local 624, AFL-CIO, Petitioner.** Case 20-RC-17513

June 25, 1999

DECISION ON REVIEW AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (relevant portions are attached as an appendix). The request for review is granted as it raises substantial issues warranting review. Having carefully considered the Regional Director's undisputed findings and the Employer's request for review, we conclude, contrary to the Regional Director, that the Employer has presented sufficient evidence to rebut the single facility presumption. As such, we find that the petitioned-for unit of drivers and helpers working at the Employer's Petaluma facility is not an appropriate unit for bargaining.

The Regional Director found that the Employer is a separate administrative segment of a larger corporation called "the Ratto Group" with a separate payroll. The Regional Director also found that some of the drivers have regular route assignments originating at the Petaluma facility; there is some geographic distance between the Petaluma yard and the Ratto Group's other facilities; and the Petitioner currently represents drivers at two of the other Ratto Group companies in separate units. However, the undisputed facts also show that employees of all of the Ratto Group's companies share common supervision by the Ratto Group's owner and operations manager, and that there is a high degree of centralized control over labor relations. There is also a significant degree of contact and interchange, including both permanent transfers and frequent temporary interchange, between the petitioned-for drivers and drivers from other Ratto Group companies. Finally, all of the unrepresented employees share common pay and benefits, have common seniority, and receive similar training; and employees in similar classifications perform similar work, regardless of location. Given these facts, we find that Employer has successfully rebutted the single-facility presumption. See *R&D Trucking*, 327 NLRB No. 103 (1999).

Accordingly, the Regional Director's Decision finding the petitioned-for unit to be appropriate is reversed, and the Direction of Election is vacated.<sup>1</sup> This case is remanded to the Regional Director to determine the appropriate unit for bargaining.<sup>2</sup>

<sup>1</sup> Since we find that the petitioned-for unit is not appropriate, we need not address the Employer's argument that the Regional Director erred by failing to include mechanics in the unit.

<sup>2</sup> In remanding the case to the Regional Director, the Board expresses no view as to whether an overall unit is the appropriate unit, as

APPENDIX

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

By its amended petition, the Petitioner seeks to represent a unit comprised of all full-time and regular part-time drivers and drivers' helpers employed by Novato Disposal Service, Inc. (the Employer or Novato Disposal) at its Petaluma, California facility excluding mechanics, mechanics' helpers, clerical employees, guards, and supervisors as defined in the Act.

The Employer contends that the only appropriate unit is one that includes approximately 110 employees, including drivers, drivers' helpers, mechanics, mechanics' helpers, bailer operators, loader operators, recycling center laborers, floor operators, and buy back attendants employed by eight separate corporations that are part of an overall family owned and operated business engaged in the collection of refuse and recycling of materials in Marin and Sonoma Counties. This family business is called the Ratto Group Corporation (the Ratto Group). The eight Ratto Group companies whose employees the Employer contends must be included in the unit include the Employer (Novato Disposal), Sunrise Garbage Service (Sunrise), Windsor Refuse and Recycling (Windsor Refuse), Pacific Coast Disposal, West Sonoma County Transfer Station, (WSCOT), West Sonoma County Disposal (WSCOD), Timber Cove Recycling (Timber Cove), and Total Waste Systems, Inc. (Total Waste Systems).

The Employer would exclude from the unit employees at two other companies that are also owned by the Ratto Group, San Anselmo Refuse and Recycling, Inc. (San Anselmo Refuse) and Fairfax Refuse and Recycling, Inc. (Fairfax Refuse). Each of these companies is also engaged in the collection and disposal of refuse and the recycling of materials in Marin and Sonoma Counties; each operates out of the same facility in Petaluma as does the Employer; and each has a separate collective-bargaining agreement with the Petitioner covering its respective drivers and drivers' helpers.

*The Ratto Group Companies.* The 10 Ratto Group companies listed above, including the Employer, are owned by James Ratto and his wife Diane and are managed by James Ratto and his son, Operations Manager Steve Ratto. Each of the companies has a separate contract to provide refuse collection and recycle services to individual municipalities or counties. The Ratto Group also owns another corporation called North Bay Corporation, which leases trucks and other equipment to all of the other Ratto Group companies.

The primary locations for all of the Ratto Group companies are in Petaluma, Santa Rosa and Gualala, California. The Santa Rosa and Petaluma yards are the largest Ratto Group facilities. The Employer operates out of the Petaluma yard. The Santa Rosa yard is located about 17 miles from the Petaluma yard and the Gualala yard is located about 50 miles from the Petaluma yard and about 40 miles from the Santa Rosa yard. In addition to these locations, the Ratto Group operates five transfer stations, located at Sonoma, Annapolis, Guerneville, Healdsburg, and Occidental, California, where refuse is taken prior to being transferred to larger disposal sites. The Ratto Group also oper-

the Employer contends, or whether some lesser combination of facilities and/or classifications would also be appropriate.

ates four buy-back centers at Novato and Gualala where recyclable materials can be redeemed for cash.

The following Ratto Group companies work out of the Petaluma yard: the Employer, Fairfax Refuse, San Anselmo Refuse, Timber Cove Recycling, and Total Waste Systems. Fairfax Refuse and San Anselmo Refuse have separate collective-bargaining agreements with the Petitioner covering their respective drivers and drivers' helpers.

The Petaluma yard is a five-acre facility enclosed by a fence that has a single entrance. Managerial and clerical offices are located at the north end of the yard; fuel pumps and a dispatcher's office are located at the center of the yard; and a parking lot is situated nearby that is used for the Employer's vehicles of the Employer, as well as for the trucks of Fairfax Refuse and San Anselmo Refuse. To the south of the parking lot is the mechanics' shop and a fenced-off recycling area where recyclable materials are sorted by Timber Cove Recycling employees.

The following Ratto Group companies work out of the Santa Rosa yard: WSCD, WSCT, Timber Cove Recycling (which works out of both the Santa Rosa and Petaluma locations), Sunrise, Pacific Coast Disposal, Windsor Refuse, and Total Waste Systems. The Santa Rosa yard consists of a large metal building, half of which is a mechanics' shop and half of which is a recycle center. Offices are connected to this main building. The dispatching office is within the mechanics' shop. Collectively, the Ratto Group companies at the Santa Rosa yard employ the following employees: 4 front loader drivers, 4 rear loader drivers, 1 rear load helper, 5 debris box drivers, 4 long haul drivers, 8 recycle truck drivers, 15 recycle laborers, 3 bin container truck drivers, ½ yard waste driver who splits his time as a debris box driver, 2 automated truck drivers, 2 baler operators, 8 transfer drivers, 1 half-time water truck drivers who split their time as debris box drivers, and one street sweeper. There are also four mechanics and two mechanics' helpers employed at the Santa Rosa yard who appear to be employed directly by the Ratto Group.

Below is a brief description of each of the Ratto Group corporations:

*San Anselmo Refuse* is located at the Petaluma yard. It provides residential and commercial refuse disposal and recycling services for the City of San Anselmo. The Petitioner and San Anselmo Refuse have a collective-bargaining agreement effective August 23, 1996 through August 31, 1999, that covers approximately 10 drivers and helpers. This agreement does not include mechanics or mechanics' helpers. The equipment used by San Anselmo Refuse includes one front load truck that is shared with Fairfax Refuse and Novato Disposal, five rear load trucks, and two recycling trucks. San Anselmo Refuse also shares a container truck with Fairfax Refuse because of the proximity of the two cities. All of this equipment except for the front load truck is parked at the Petaluma yard. The front load truck is kept at the Santa Rosa yard. The front load truck is driven by front load driver Scott Parzini who works 40 percent of his time for San Anselmo Refuse; 40 percent of his time for Fairfax Refuse; and 20 percent of his time for the Employer.

*Fairfax Refuse* is also located at the Petaluma yard. It provides residential and commercial refuse disposal and recycling services for the City of Fairfax. As noted above, Fairfax Refuse and the Petitioner are parties to a collective-bargaining agreement that is effective by its terms from April 1, 1998, through March 31, 2001. It covers five drivers and helpers and

excludes the same classifications of employees as the San Anselmo Refuse agreement.

*Sunrise* operates out of the Santa Rosa yard. It provides residential and commercial refuse disposal and recycling services in the Russian River area of Sonoma County. It has three or four full-time employees.

*Windsor Refuse* is also located at the Santa Rosa yard. It provides residential and commercial refuse disposal and recycling services in the City of Windsor. The residential truck used for the City of Windsor is automated, unlike the rear load trucks used by other companies. Windsor Refuse has the only street sweeper among the various Ratto Group companies. About six full-time drivers work for Windsor. The front load truck and front load driver who handles the commercial garbage collection service for Windsor is split between Sunrise and Windsor Refuse because neither company has enough work for a full-time driver.

*WSCD* is located at the Santa Rosa yard and is engaged in providing residential and commercial refuse disposal and recycling services in Northeast Santa Rosa County and in the Sebastopol area, but not in the City of Sebastopol, and in the areas of Graten, Occidental, Bodega Bay and Valley Ford, California. It operates pursuant to a single contract with the County of Sonoma.

*WSCT* operates five transfer stations that are owned by the County of Sonoma and are located at Annapolis, Healdsburg, Guerneville, Occidental and Sonoma, California. As indicated above, transfer stations are locations where refuse is taken before being transferred to a larger disposal site. Some of these transfer stations are open 7 days a week; others are open on certain days; and one is unattended. Working at the transfer stations are loader operators who operate heavy equipment and load transfer trailers and floor operators who perform general clean up, traffic control and identification of hazardous wastes coming into the stations. The job classifications at the five transfer stations are as follows: Annapolis (one loader operator); Guerneville (one loader operator and one part-time floor operator); Healdsburg (one loader operator and two floor operators), Sonoma (one loader operator and two floor operators), and Occidental (one debris box driver).

*Timber Cove Recycling* processes recycling materials for all of the other Ratto Group corporations and is responsible for operating four buy-back centers at Novato and Gualala where individuals redeem recyclable materials for money. The sorting of recyclable materials is handled at both the Santa Rosa and Petaluma yards. About 2 weeks before the hearing in the instant case, the processing of recyclable materials was consolidated at the Santa Rosa yard because of repairs that were needed on the bailer machine in the Petaluma yard. About 12 Timber Cove recycling center employees were transferred from the Petaluma yard to the Santa Rosa yard. When the bailer machine is repaired, it is anticipated that at least seven or eight of the Timber Cove recycling laborers will return to the Petaluma yard.

Timber Cove also operates buy-back centers at supermarkets and various other locations where the public may redeem recyclable materials for cash. Timber Cove employs buy-back attendants at these centers.

*Total Waste Systems* handles sludge hauling for various cities in the areas where the other Ratto Group companies operate. It serves only the Ratto Group and it uses two trucks and operates out of both the Santa Rosa and Petaluma yards.

*Pacific Coast Disposal* is located at Gualala. It provides residential and commercial refuse disposal and recycling services in Northern Sonoma County along the coast, in the Sea Ranch and Gualala area. Trucks used by Pacific Coast Disposal (i.e., two rear loaders and one container truck) are generally parked at the Gualala yard. Drivers report directly to the Gualala yard and work from there but they do go into Santa Rosa on a monthly basis to have the trucks serviced. Employees in the following classifications are employed at Gualala by Pacific Coast Disposal and by Timber Cove Recycling: a rear loader driver, a rear loader helper, a recycling driver, and a buy-back attendant.

*North Bay Corporation* is also wholly owned by the Rattos. It leases all of the trucks and other equipment to all of the Ratto Group companies.

#### The Employer's Operation

The Employer is engaged in the collection and disposal of commercial and residential refuse and the recycling of materials in the Novato area.

The Employer employs the following employees at the Petaluma yard: 5 rear load drivers who collect residential garbage cans; 5 rear load helpers who assist the rear load drivers; 2 yard waste drivers who collect yard waste; 1 recycling driver who assists the yard waste drivers and picks up residential recycling materials; 3 front loader drivers who collect garbage for commercial customers; 5 debris box drivers who deliver and pick up 15 to 40 yard containers for customers doing service construction and clean up work; 3 bin container truck drivers who deliver 3 to 4 yard clean up bins and recycling buckets to customers; and 1 long haul driver who moves recyclable materials to market and performs sludge hauling. The record reflects that most of the drivers and drivers' helpers employed by Employer's have regular routes that they drive on a weekly basis for the City of Novato.

There are three mechanics who are also employed at the Petaluma yard. As discussed below, it appears that these mechanics are employed by the Ratto Group and provide mechanical services for vehicles used by all of the Ratto Group companies, including the Employer.

#### Common Corporate Structure, Management, and Supervision

As noted above, all of the Ratto Group companies, including the Employer, are owned, operated, and managed by the Ratto family. Employee records for all Ratto Group companies, including the Employer, are maintained at corporate headquarters in downtown Santa Rosa and all payroll functions are performed there. The record reflects that all of the Ratto Group companies at all locations are supervised by James and Steve Ratto, who divide their time between locations. As discussed below, the record does not disclose whether there are any other managers or supervisors at any of the Employer's facilities.

#### Employee Interchange

The record discloses that most of the drivers employed by the Employer, San Anselmo Refuse and Fairfax Refuse have regular routes that they are assigned to during the week. However, the record also reflects that there is a significant degree of interchange among the Employer's drivers and the drivers of the other Ratto Group companies in terms of both permanent and temporary transfers.

With regard to permanent transfers among the Ratto Group Companies, the record discloses that driver Ignacio Padilla

began working for the Employer as a rear load helper; later became a rear load driver; and, at the time of the hearing, was working out of the Santa Rosa yard as a debris box driver and taking care of the Occidental Transfer station. The record further reflects that Jose Chavez began working as a rear load helper for the Employer; later became a floor operator and a loader operator at the Ratto Group transfer sites; and, at the time of the hearing, was a debris box driver out of the Petaluma yard and a recycling attendant at the buy-back center in Novato. Domingo Chavez began working for the Employer as a rear loader helper; later became a transfer station operator in Sonoma; and at the time of the hearing, worked out of the Santa Rosa yard. L. Campos started working for the Employer as a rear load helper and later became a rear load driver for Pacific Coast Disposal at Gualala. Robert Dotson, who has been working for the Ratto Group for over 20 years, started working for the Employer as a rear load helper; later became a rear load driver, front load driver and a recycling driver; and, at the time of the hearing, he was working as a street sweeper for Windsor Refuse out of the Santa Rosa yard. L. Bechtel, who is currently employed by the Employer as a front loader driver, splits his time between the Employer (60 percent) and the County of Sonoma (40 percent). Francisco Gonzalez started working for the Employer as a bin truck driver; later became a rear load helper and a recycling driver; and has also been a recycling driver for WSDS, Sunrise, and Windsor Refuse.

The record also reflects that there is a high degree of interchange and contact with regard to the debris box drivers. Thus, drivers employed by the Employer who have regular routes during the week also perform debris box driving for other Ratto Group companies on a frequent basis on the weekends. Debris box drivers also pick up and deliver debris boxes at different locations.

The Employer's drivers are also assigned to substitute for absent employees in Santa Rosa about once or twice a month and other drivers are used to cover for absent Employer drivers. A few of the Employer's drivers park their vehicles at the Santa Rosa yard for their own convenience because they live closer to Santa Rosa than to Petaluma. In sum, the record establishes a significant degree of interchange and contact among the drivers at the different locations, particularly between the Petaluma and Santa Rosa yards.

#### Common Pay and Benefits

With the exception of the drivers and helpers at San Anselmo Refuse and Fairfax Refuse who are covered by collective-bargaining agreements with the Petitioner, the record establishes that the employees at all Ratto Group companies, including those employed by the Employer, are paid at the same pay rates and receive the same benefits. There are no differences among companies with respect to how employees qualify for wage increases or benefits. All employees at all Ratto Group companies, with the exception of those employed by the Employer, receive paychecks from the Ratto Group that do not bear any indication as to the particular company for which they work. The record reflects that since January 1, 1999, the Employer's employees have been required to be paid separately because of a requirement imposed by the City of Novato in order to measure contract costs.

#### Other Working Conditions

Employees in the same job classification working for all of the various Ratto Group companies, including the Employer,

perform similar work. There are no differences among the various companies with regard to the hours of work of employees within the same classification. Drivers begin work at various times ranging from 3 to 6 a.m. Mechanics work from 5 to 2 a.m. or from 8 a.m. to 5 p.m. Employees at the recycling centers work shifts that run from 3 a.m. to 12 p.m. and from 12 to 8 or 9 p.m. Employees at the buy-back centers basically work from 8 a.m. to 4 p.m. All employees fill out timesheets. All drivers fill out driver's logs and use the same type of forms. No employees are required to wear uniforms. Drivers use trucks that are painted green and white regardless of the location. While the trucks used by the various companies bear the name of the company providing the local service, the record reflects that trucks are sometimes interchanged so that equipment used in one locale may bear the name of the company servicing another locale. Almost all Ratto Group trucks, except the rear load trucks used by the Employer, are equipped with two-way radios that are tuned to the same frequency.

#### Employee Seniority is Common

All employees of all Ratto Group companies at all locations, including the Employer's employees, are on a single seniority list, except for the employees of San Anselmo Refuse and Fairfax Refuse who are covered under collective-bargaining agreements with the Petitioner that determine their seniority.

#### Analysis

Section 9(b) of the Act provides that the Board "shall decide in each case whether . . . the unit appropriate for the purposes of collective-bargaining shall be the employer unit, craft unit, plant unit, or a subdivision thereof. In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate." *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). The Board does not compel a petitioner to seek any particular appropriate unit. As the Board stated in *Overnite Transportation*, 322 NLRB 723 (1996), "The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective-bargaining." As stated by the Board in *Morand Bros, Beverage Co.*, 91 NLRB 409, 418 (1950), enfd. on other ground, 190 F.2d 576 (7th Cir. 1971):

There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be 'appropriate.'

"A union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with that requested unit does not exist." *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963).

With regard to unit determinations made regarding employees at single versus multilocation units, the Board has long applied the principle that a single facility 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. See *Foodland of Ravenswood*, 323 NLRB 665, 666 (1997); *J & L Plate, Inc.*, 310 NLRB 429 (1993); *Penn Color, Inc.*, 249 NLRB 1117 (1980). The presumed appropriateness of a single-location unit is rebuttable but the burden is on the party opposing the appropriateness of the single-facility unit to present sufficient evidence to overcome the presumption. *J & L Plate*, supra; *Red Lobster*, 300 NLRB

908, 910-911 (1990). To determine whether the presumption has been rebutted, the Board examines a number of community of interest factors, including the central control over daily operations and labor relations, including the extent of local autonomy; the similarity of employee skills, functions and working conditions; the degree of employee interchange; the distance between locations; and bargaining history if any exists. See *Foodland of Ravenswood*, supra, 323 NLRB at 666; *J & L Plate*, supra at 429; citing *Esco Corp.*, 298 NLRB 837, 839 (1990).

Application of these factors to the instant case shows that certain community-of-interest factors favor an overall unit finding, including the high degree of centralized control over daily operations, labor relations and supervision at all Ratto Group companies by James and Steve Ratto. In addition, employee skills, functions, and working conditions are the same regardless of the location. With the exception of the San Anselmo Refuse and Fairfax Refuse employees whose working conditions are determined by the terms of the collective-bargaining agreement between those companies and the Petitioner, the wage scales and fringe benefits for employees at all Ratto Group companies are the same and all employees work similar hours and receive similar training. Finally, the level of employee interchange and contact appears to be significant.

On the other hand, there are factors that support a finding that the single-location unit petitioned-for herein is an appropriate unit. First, the record reflects that the Employer is a separate corporate entity and is treated separately for purposes of payroll and other administrative tracking purposes as required by the city of Novato in its contract with the Employer. Second, despite the high level of interchange, most of the Employer's drivers and helpers have regular route assignments in Novato. Third, there is a significant distance between the Employer's location at the Petaluma yard and most of the other Ratto Group locations. Thus, the distance between the Petaluma yard and the Santa Rosa yard is about 19 miles and between the Petaluma yard and the Gualala yard is about 40 to 50 miles.

As indicated above, of the five Ratto Group companies that are located at the Petaluma yard where the Employer is located, two have separate collective-bargaining agreements with the Petitioner covering their respective drivers and drivers' helpers. The other two companies are engaged in businesses that differ in nature from the types of services performed by the Employer on a daily basis. Thus, Timber Cove Recycling, which is located at the Petaluma yard, is also located at the Santa Rosa yard, and is engaged in the sorting and redemption of recyclable materials at buy-back centers at various locations. Timber Cove is not involved in driving regular garbage pick up routes for residential and commercial customers as is the Employer. Total Waste Systems which is located at the Petaluma yard, is also located at the Santa Rosa yard, and is involved in sludge hauling.

Finally, the evidence regarding bargaining history is that two of the corporate entities at the Petaluma yard, San Anselmo Refuse and Fairfax Refuse companies, have individual collective-bargaining agreements with the Petitioner that cover their respective drivers and driver helpers. None of the other Ratto Group companies, including the Employer, have any history of collective bargaining.

In sum, the petitioned-for unit is a single-location unit and there is a strong presumption favoring the appropriateness of such units. The Employer carries the burden to overcome this

presumption. In order to do so, it must establish that the Employer's operation and its employees have been effectively merged with the other operations of the Ratto Group companies to such an extent as to leave it with no separate identity. I find that the Employer has failed to carry this burden. I base this conclusion on the fact that the Employer is a separate corporate entity and is administratively treated as such; that there is a significant geographic distance separating the Employer's operation from most of the other Ratto Group locations; that most

of the Employer's drivers and helpers have regular routes in Novato; and finally, there is a bargaining history in individual units of drivers and helpers at two of the Ratto Group companies which are located at the Petaluma yard where the Employer's operation is located.

Accordingly, I find that the Employer has not rebutted the presumption favoring single-location units and that a unit limited to employees of Novato Disposal is an appropriate unit.