

Canal Carting, Inc. and Canal Sanitation, Inc., A Single Employer and Local 813 International Brotherhood of Teamsters, AFL–CIO, Petitioner and Local 890, League of International Federated Employees, Intervenor. Case 29–RC–10043.

August 8, 2003

DECISION ON REVIEW AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND ACOSTA

On June 25, 2003, the Regional Director for Region 29 issued a Decision and Direction of Election, in which he found that there was no contract bar to the petition. The Employer filed a timely request for review, and the Petitioner filed an opposition to that request.

The National Labor Relations Board has delegated its authority to a three-member panel. Having carefully considered the matter and the record, we grant review, reverse the Regional Director, and dismiss the petition.

Both Canal Carting, Inc. (Carting) and Canal Sanitation, Inc. (Sanitation) are engaged in waste removal and recycling. They operate out of a facility in Brooklyn, New York. Carting performs services only in Manhattan, while Sanitation conducts business primarily in Queens, Brooklyn, the Bronx, Staten Island, and New Jersey. Carting and Sanitation drivers do not interchange routes, and Carting and Sanitation do not interchange their trucks or other equipment. The Employer’s mechanics and truck washer work on vehicles owned by both Carting and Sanitation. The parties do not dispute that Carting and Sanitation are a single employer under the Act.

The Petitioner, Local 813, International Brotherhood of Teamsters, AFL–CIO, has represented drivers and helpers at Carting since at least the 1970s. The most recent agreement between the Petitioner and Carting expired on November 30, 2002. The Employer continues to pay wages and fund contributions pursuant to the expired contract.

From 1996 to 2000, Sanitation’s drivers were represented by Laborers International Union Local 958/108. From mid-1997 through mid-2000, the unit consisted of just one driver. Local 958/108 ceased to represent the unit when Sanitation terminated the unit’s sole employee in June 2000.

Sanitation subsequently hired other employees as drivers, helpers, mechanics, and truck washers. On November 1, 2001, Sanitation signed a collective-bargaining agreement with the Intervenor, League of International Federated Employees, Local 890. The contract, which expires on October 19, 2004, covers a unit of drivers,

helpers, mechanics, welders, utility, and laborers. The Employer is honoring the terms of the contract.

The Petitioner seeks to represent a unit that encompasses employees at both Carting and Sanitation, and that includes “[a]ll full-time and regular part-time chauffeurs, helpers, mechanics, welders, utility, laborers and truck washers, exclusive of all other employees, guards, managers and supervisors.” The petitioned-for unit currently consists of 6 drivers employed by Carting, and 12 drivers, 10 helpers, 2 mechanics, and 1 truck washer employed by Sanitation.¹

The Regional Director found that the petitioned-for unit is appropriate, and that the employees represented by the Intervenor do not constitute an appropriate unit. Therefore, according to the Regional Director, the current collective-bargaining agreement between Sanitation and the Intervenor does not bar the election petition.

The Employer contends that the Regional Director erred in finding that the bargaining unit represented by the Intervenor is inappropriate, and in finding that Sanitation’s collective-bargaining agreement with the Intervenor does not bar the Petitioner’s election petition. We find merit in the Employer’s contentions.

In determining whether the Intervenor’s collective-bargaining agreement bars the Petitioner’s election petition, the Regional Director engaged in a community-of-interest analysis, in which he considered skills and functions of employees, supervision, employee interchange, working conditions, and bargaining history.

In our view, the Regional Director failed properly to consider the importance of bargaining history in making his determination on the appropriateness of Sanitation’s unit and on the contract bar issue. As one court has noted, “the Board usually applies the community-of-interest and plant-wide unit tests only when delineating units of previously unrepresented employees, not, as here, when it is assessing historical units that have had long periods of successful collective bargaining.” *Trident Seafoods, Inc. v. NLRB*, 101 F.3d 111, 118 (D.C. Cir. 1996). Rather than pursue solely a community-of-interest analysis, the Regional Director should have considered whether compelling circumstances warranted disturbing the historical bargaining units that developed at Carting and Sanitation.

Contrary to the Regional Director, we find that the unit of employees represented by the Intervenor is appropriate, and that the existing contract between Sanitation and the Intervenor acts as a bar to the Petitioner’s election

¹ The Regional Director found that some of Carting’s routes require helpers. It is not known whether Carting employs any helpers. Thus, as the Regional Director found, helpers employed by Sanitation may be working for both companies.

petition. It is well settled that the existence of significant bargaining history weighs heavily in favor of a finding that a historical unit is appropriate, and that the party challenging the historical unit bears the burden of showing that the unit is no longer appropriate. See *Children's Hospital of San Francisco*, 312 NLRB 920, 929 (1993) (“Both the Board and the courts have long recognized not only that the traditional factors, which tend to support the finding of a larger or single unit as being appropriate, are of lesser cogency where a history of meaningful bargaining has developed, but also that this fact alone suggests the appropriateness of a separate bargaining unit and that compelling circumstances are required to overcome the significance of bargaining history.”) (internal quotation marks omitted), *enfd. sub nom. California Pacific Medical Center v. NLRB*, 87 F.3d 304 (9th Cir. 1996). See also *Fisher Broadcasting, Inc.*, 324 NLRB 256, 262–263 (1997); *Buffalo Broadcasting Co.*, 242 NLRB 1105, 1105 fn. 2 (1979) (“The Board is reluctant to disturb units established by collective bargaining as long as those units are not repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act.”); *Columbia Broadcasting System, Inc.*, 214 NLRB 637, 643 (1974); *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549, 1550 (1965) (“[T]he Board has long held that it will not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstances.”).

The bargaining history between Sanitation and representatives of its employees from 1996 to 2000, and from

2001 to the present, along with the existing collective-bargaining agreement between Sanitation and the Intervenor, weigh heavily in favor of respecting the historical bargaining units of both Sanitation employees and Carting employees, as does the lengthy bargaining history between Carting and the Petitioner in a separate unit. There is nothing intrinsically inappropriate about the existing units: employees in those units work on routes in locations that are geographically distinct from each other, and the units each have a distinct bargaining history. The existing units are not repugnant to the Act, and neither the Petitioner nor the Regional Director has established sufficiently compelling circumstances that would warrant disturbing the established unit currently represented by the Intervenor. See *Met Electrical Testing Co.*, 331 NLRB 872 (2000); *Banknote Corp. of America*, 315 NLRB 1041, 1041, 1043 (1994), *enfd.* 84 F.3d 637 (2d Cir. 1996).

Accordingly, we grant the Employer's request for review, reverse the Regional Director's finding that the bargaining unit represented by the Intervenor is inappropriate, find that the collective-bargaining agreement between the Employer and the Intervenor bars the Petitioner's petition, and dismiss the petition.²

² The Petitioner is, of course, free to file an election petition during the window period preceding the expiration of the collective-bargaining agreement between the Employer and the Intervenor in 2004, seeking to represent Sanitation's employees.