

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

RATTO GROUP CORPORATION, INC. d/b/a
NOVATO DISPOSAL SERVICES, INC;
SUNRISE GARBAGE SERVICE; WINDSOR
REFUSE AND RECYCLING; PACIFIC COAST
DISPOSAL; WEST SONOMA COUNTY TRANSFER
STATION; WEST SONOMA COUNTY DISPOSAL;
TIMBER COVE RECYCLING; AND TOTAL WASTE
SYSTEMS, INC.

Employer¹

and

Case 20-RC-17513

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 624, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

On June 25, 1999, the Board issued a Decision on Review and Order reversing the Decision and Direction of Election issued by the undersigned Regional Director on May 17, 1999, which had determined that the petitioned-for unit limited to drivers and driver's helpers employed by the Employer at its Petaluma, California, facility was an appropriate unit. In its Decision on Review, the Board concluded that the Employer had successfully rebutted the single facility

¹ The name of the Employer has been amended by the undersigned because of the finding herein that the above entities all constitute a single employer and that the appropriate unit is comprised of employees employed by each of the named entities under which the Employer does business.

presumption relied upon by the undersigned in finding the unit therein to be appropriate. The case was remanded to the undersigned to determine the appropriate unit for bargaining. The Board noted that in remanding the case, the Board was expressing no view as to whether an overall unit is the appropriate unit, as contended by the Employer, or whether some lesser combination of facilities and/or classifications would also be appropriate.

On July 19, 1999, in response to the Board's decision, the Petitioner amended its petition as follows:

All full-time and regular part-time drivers and drivers' helpers employed by the following named companies: Novato Disposal Service, Inc., Fairfax Garbage Disposal, San Anselmo Refuse and Recycling, West Sonoma County Disposal, West Sonoma County Transfer, Sunrise Garbage Service, Pacific Coast Disposal, Windsor Refuse and Recycling, and Total Waste Systems; excluding mechanics, mechanics' helpers, employees of Timber Cove Recycling, office clerical employees, guards and supervisors as defined in the Act.

The Petitioner also asserts that Stanley Pronzini and Jerry Roy, Sr. are statutory supervisors. It requested that the hearing be reopened to develop a fuller record on these supervisory issues as well as the scope of the unit. The Employer opposed the reopening of the record and reiterated its position that the only appropriate unit was an overall unit.

After reviewing the record and the positions of the parties, I have concluded that no further hearing is necessary to make a unit determination herein and I find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is a family-owned business that is comprised of ten corporations that are engaged in the refuse and recycling business in Sonoma and Marin Counties called the

Ratto Group Corporation (herein called the Ratto Group). Drivers and drivers' helpers at two of these companies, San Anselmo Refuse & Recycling, Inc. (herein called San Anselmo Refuse) and Fairfax Garbage Disposal, Inc. (herein called Fairfax Garbage Disposal) are currently represented by the Petitioner. The other eight Ratto Group companies whose employees are petitioned-for herein are Novato Disposal, Inc. (herein called Novato Disposal), Sunrise Garbage Service (herein called Sunrise), Windsor Refuse and Recycling (herein called Windsor Refuse), Pacific Coast Disposal, West Sonoma County Transfer Station, (herein called WSCT), West Sonoma County Disposal (herein called WSCD), Timber Cove Recycling and Total Waste Systems, Inc. (herein called Total Waste Systems). Based on the findings discussed below, I have determined herein that these companies comprise a single employer based on their common ownership; management; supervision; shared equipment; interchange of employees; etc.

The parties stipulated, and I find, that one of these Ratto Group companies, Novato Disposal, is a California Subchapter S corporation, with offices and places of business in Santa Rosa and Petaluma, California, where it is engaged in the non-retail collection and disposal of industrial, commercial, and residential refuse and recycling of materials. The parties further stipulated, and I find, that the Employer earns gross revenue valued in excess of \$50,000 a year in return for its collection and disposal of refuse and recycling of materials on behalf of various municipalities. Based on the parties' stipulation to such facts, it is concluded that the Ratto Group Corporation is engaged in commerce within the meaning of the Act and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. The parties stipulated, and I find, that there is no contract bar to this proceeding.

5. By its amended petition, the Petitioner seeks to represent a unit comprised of the employees in the above-described unit.² As indicated above, the Petitioner seeks to exclude the mechanics, mechanics' helpers and employees of Timber Cove Recycling.

The Employer contends that the petitioned-for unit is inappropriate and 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 its eight Ratto Group corporations listed above. The Employer would exclude from the unit employees at two other companies that are also owned by the Ratto Group, San Anselmo Refuse and Fairfax Refuse which are already represented by the Petitioner herein.

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

² It is noted that the Petitioner inadvertently included in its amended petition description the two companies where it represented drivers' and drivers' helpers at the time of the hearing, San Anselmo Refuse and Fairfax Garbage Disposal. It is assumed this was an inadvertent error by the Petitioner as there would be no question concerning representation regarding employees at these companies.

The primary locations for all of the Ratto Group companies are at Petaluma, Santa Rosa and Gualala, California. The Santa Rosa and Petaluma yards are the largest Ratto Group facilities. 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 has 5 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 operates three buy-back centers in Novato and one buy-back center in Gualala, California, where recyclable materials can be redeemed for cash.

The following Ratto Group companies work out of the Petaluma yard: Novato Disposal, 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 the drivers and drivers' helpers at each of the respective companies.

The Petaluma yard is a 5-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 the dispatcher's office are located at the center of the yard; and a parking lot is situated nearby that is used for the Novato Disposal, Fairfax Refuse and San Anselmo Refuse vehicles. 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, a driver who splits his time as a yard waste driver and a debris box driver, 2 automated truck drivers, 2 baler operators, 8 transfer drivers, a driver who splits his time as a water truck and debris box driver, and one street sweeper. There are also 4 mechanics and 2 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, 5 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% of his time for San Anselmo Refuse; 40% of his time for Fairfax Refuse; and 20% of his time for Novato Disposal.

Fairfax Garbage Disposal is also located at the Petaluma yard. It provides residential and commercial refuse disposal and recycling services for the City of Fairfax. Fairfax Garbage Disposal 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 5 drivers and helpers and sets forth 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 Refuse is split between Sunrise and Windsor Refuse because neither company has enough work for a full-time driver.

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 proceed to work from there. They go into the Santa Rosa yard on a monthly basis. The following classifications of employees report to the Gualala yard: 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.

Novato Disposal is engaged in the collection and disposal of commercial and residential refuse and the recycling of materials in the Novato area. It is located in the Petaluma yard. The Employer employs the following employees at the Petaluma yard, not all of whom work for Novato Disposal: five rear load drivers who collect residential garbage cans; five rear load helpers who assist the rear load drivers; two yard waste drivers who collect yard waste; one recycling driver who assists the yard waste drivers and picks up residential recycling materials; three front loader drivers who collect garbage for commercial customers; five debris box drivers who deliver and pick up 15 to 40 yard containers for customers doing service construction and clean up work; three bin container truck drivers who deliver three to four yard clean up bins and recycling buckets to customers; and one 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 Novato Disposal have regular routes that they drive on a weekly basis for the City of Novato.

As discussed more fully below, there are three mechanics who are also employed at the Petaluma yard. As discussed below, these mechanics are employed by the Ratto Group and provide mechanical services for vehicles used by all of the Ratto Group companies.

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 seven 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 2 floor operators), Sonoma (one loader operator and two floor operators) and Occidental (one debris box driver).

Timber Cove Recycling is located in both the Employer's Santa Rosa and Petaluma yards and is the recycling division for all the other Ratto Group companies as well as outside companies. Recycle trucks and other trucks and debris boxes from those other Ratto Group

companies are brought into the Santa Rosa and Petaluma yards where Timber Cove Recycling employees sort them for shipment to other locations. Approximately 15 recycle laborers are employed by Timber Cove Recycling at Santa Rosa; and at Petaluma, there are approximately 7 or 8 employees. The Santa Rosa yard has the more modern recycling/sorting facility. At the time of the hearing, most of the Petaluma recycling employees had been transferred to the Santa Rosa location because the bailer was broken at the Petaluma yard. Only three recycle laborers had been left in Petaluma who were loading debris boxes to be transported to the Santa Rosa yard for processing. The recycle operation is to resume at the Petaluma yard once the bailer is repaired and about 7 or 8 recycling employees will be bailing newspaper and cardboard but no longer handling plastics at the Petaluma facility.

Long haul drivers from all of the Employer's locations are used to transport sorted recyclable materials to brokers or to mills at various locations in California. According to Steven Ratto, the Employer's operations manager, the drivers are used company-wide and this includes the use of drivers of and for Timber Cove Recycling.

Until two weeks prior to the hearing when the bailer broke down at the Petaluma yard, there were two long haul drivers who would normally pick up recyclable materials from the Petaluma, Santa Rosa and Gualala locations and transport them to market. Thus, driver Geraldo Segura worked for Timber Cove Recycling hauling materials that had been sorted. Another driver, Tom Matteri, who normally works out of the Santa Rosa yard driving recyclable materials to market, also drives long haul debris trucks for Timber Cove Recycling. Jesus Rea, a recycle driver for Novato Disposal at the time of the hearing, had formerly worked for both Sunrise Garbage as a debris box operator and for Timber Cove Recycling. Steven Ratto further

testified that a debris box driver who typically starts his day in Petaluma might transport debris boxes for Timber Cove Recycling and also for West Sonoma County Transfer. According to Ratto, prior to the breakdown of the bailer at the Petaluma yard, the drivers from Novato Disposal worked overtime hours for Timber Cove Recycling.

Other examples of the sharing of employees between other Ratto Group companies and Timber Cove Recycling include driver E. Harp who primarily works as a debris box driver for a Ratto Group company other than Timber Cove Recycling out of the Petaluma yard, but who has also been assigned to work as a bailer operator for Timber Cove Recycling at that location. E. Oretaga works for a different Ratto Group company as a rear loader driver out of the Petaluma yard but also frequently (i.e., several times a week) works as a recycle center laborer for Timber Cove Recycling as well as a front loader driver and a green yard waste driver for other Ratto Group companies. Nicaceo Hernandez, a mechanics' helper, also frequently works as a recycle center laborer for Timber Cove Recycling as well as a rear load helper for other Ratto Group companies once or twice a month. Ratto further testified that there is one employee who splits his time working at the Employer's transfer station at Guerneville and working for Timber Cove Recycling. He further testified that when rear loader helpers working for other Ratto Group companies are absent, the Employer frequently uses employees from Timber Cove Recycling to replace them.

Steven Ratto testified that each Ratto Group company is paid for recycling and Timber Cove takes \$30 per ton for whatever is sold for recycling. For accounting purposes, the Employer keeps a separate accounting for the recycling cost for each city it services.

Recycle laborers earn between \$6 and \$10 an hour. Bailer operators earn between \$10 and \$13 an hour. Long haul drivers earn between \$9 and \$20 an hour. This compares with drivers who earn from about \$7 to \$20 an hour and drivers' helpers who earn between \$6 and \$10 an hour. As indicated below, the Timber Cove Recycling employees earn the same benefits as do all other Ratto Group company employees.

The Timber Cove Recycling Buy-Back Centers. Timber Cove Recycling also operates three buy-back centers at Novato and one in Gualala where individuals redeem recycle materials for money. Three of these centers are in supermarket parking lots and the other is in a center owned by the Employer. At Gualala, the Employer employs one buy-back attendant to run the center. Buy back attendants earn between \$6 and \$13 an hour.

The record discloses that buy back attendants have performed other jobs for the Employer. Sergio Rodriguez is a buy back attendant for Timber Cove Recycling who also does container truck driving for other Ratto Group companies out of both the Employer's Santa Rosa and Petaluma yards. Isaac Schwartz began work for the Employer as a transfer station floor operator in Gualala and at the time of the hearing was a buy back attendant for Timber Cove Recycling there. 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 working Monday through Friday as a debris box driver for Novato Disposal, and was also working on Sundays as a buy back attendant at the buy-back center in Novato for Timber Cove Recycling.

The Mechanics and Mechanics' Helpers. The record reflects that each of the Ratto Group companies leases yard space from the Ratto Group and, as a part of that lease

arrangement, is provided mechanical services. At the time of the hearing, there were three mechanics employed at the Petaluma yard, including Lead Mechanic Jose Robles and mechanics Eliseo Jacques and Panfilo Luna.³ At its Santa Rosa location, the Employer employs four mechanics and two mechanics' helpers. Most major maintenance work such as engine overhaul work is performed at the Santa Rosa shop, which is larger than the Petaluma shop. Mechanics from the Petaluma shop are frequently transferred to the Santa Rosa shop to do such work. With regard to the day-to-day maintenance of vehicles, drivers contact the mechanics if they have problems while on the road. Mechanics will provide road repair service if necessary. On a daily basis, drivers also fill out vehicle inspection forms that notify the mechanics if there is a problem with the vehicle.

The mechanics perform major repair work on the Employer's vehicles and each has a specialty. The record does not disclose that the Employer requires its mechanics to have any certifications or specialized training but it does reflect that lead mechanic Robles has been a mechanic for 30 years and that the other mechanics have been working for the Employer for at least 4 or 5 years. According to Steven Ratto, most of the mechanics' helpers are in training to become mechanics and they perform such work as changing tires and cleaning bins, trucks, and shop areas.

Lead Mechanic Jerry Roy, Jr. has also performed project construction work such as building recycling centers; installing scales; etc. Mechanic Jacques Elieso, who normally works at

³ The mechanics' helper at Petaluma had left his employment there about a week before the hearing and had not been replaced.

the Petaluma yard, also drives a debris box and a water truck for the Employer in Santa Rosa on an as needed basis.

One of the mechanics' helpers, Nicaceo Hernandez, sometimes works at the recycle center as a recycle laborer and also works as a rear load helper whenever there is a shortage of helpers. According to Ratto, until two weeks prior to the hearing when the bailer in Petaluma broke down, Hernandez was working in Petaluma as a recycle laborer almost every day; and he was working as a rear loader helper on a garbage route approximately once every two weeks. Mechanics' helpers have also transferred to other jobs for the Employer such as David Vasquez; Geraldo Segura, who was a mechanics' helper that transferred to become a rear load helper, recycle driver, debris box driver, transfer driver and at the time of the hearing, a long haul driver. Jorge Ibarra started working for the Employer as a mechanics' helper and became a recycle driver and is now a front load driver. Julian Vasquez was a mechanics' helper and transferred to the position of station floor operator, rear loader helper, rear load driver, recycle driver, and at the time of the hearing, a debris box driver. Another mechanic, Greg Planton, who is normally assigned to the Santa Rosa location, gives OSHA training and conducts safety meetings for all of the Employer's employees at all

Mechanics earn between \$10.50 and \$27 an hour. Mechanics helpers' earn between \$6 and \$9 an hour. Most of the drivers earn between \$6 and \$20 an hour. At the Petaluma shop, one mechanic works from 5 a.m. to 2 a.m., and the other two mechanics work from 8 a.m. to 5 p.m.

Lead Mechanic Jerry Roy, Jr. Operations Manager Steve Ratto testified that Lead Mechanic Roy, who has 30 years of experience as a mechanic, oversees both the Santa Rosa and

the Petaluma mechanics' shop. He works in out of the Santa Rosa mechanics' shop but visits the Petaluma shop two or three times a week, generally in connection with the need to perform some work there or to go through the vehicle inspection sheets that the Employer is required to turn over to the California DMV. Roy has the authority to direct the work of the other mechanics. Roy spends 60% of his time performing hands-on mechanical work and 40% of his time dealing with parts suppliers and doing inspection reports for the California DMV. Roy is on the payroll of the Ratto Group and shares an office with the Rattos. The record reflects that either James or Steve Ratto typically decides what repairs are to be made to the vehicles used by the various companies. However, in some instances Lead Mechanic Roy has made decisions regarding repairs. When Roy is not present in the Petaluma shop, Lead Mechanic Jose Robles has the authority to assign and direct the work of the other two mechanics.⁴ In this regard, the record discloses that the assignment of work is accomplished by agreement among the mechanics, based on the specialty required of a particular job.

Common Corporate Structure, Management and Supervision. As noted above, all of the Ratto Group companies, are owned, operated and managed by the Ratto family. Employee records for all Ratto Group companies are maintained at corporate headquarters in downtown Santa Rosa and all payroll functions are performed there. The record reflects that the employees of all of the Ratto Group companies are supervised by James and Steve Ratto, who divide their time between locations.

The Petitioner contends that there is separate supervision of certain employees of the

⁴ Robles spends 95 to 100% of his time performing mechanical work, and no party is contending that he is a supervisor under the Act.

Employer. Thus, it contends that Stanley Pronzini and mechanic Jerry Roy, Sr. are statutory supervisors. It requests that the record be reopened to further develop the record as to the supervisory status of Pronzini and Roy. In addition, the Petitioner also previously contended that Nicholas Mattos should be excluded from the unit as a supervisor under the Act. The Employer takes the opposite position as to the status of these individuals. I adhere to my previous determination in the Decision and Direction of Election in this case that Pronzini be voted subject to challenge and that Mattos and Roy are not statutory supervisors. and I decline to reopen the record to further develop the facts as to the status of Pronzini and Roy.

With respect to Pronzini, the record discloses that he had worked for the Ratto Group for about ten years and had been considered a lead person for about 2 years. Pronzini spends about 70% of his time handling customer relations/complaints and damage claims for all Ratto companies and he spends the other 30% of his work time driving a truck. The parties stipulated that he had driven a debris truck for the Employer on 26 occasions during the six months preceding the hearing in this case. Pronzini also dispatches and oversees the Petaluma facility in the absence of the Rattos. During such times, he has authority to assign work to employees and can also require them to respond to customer complaints of delayed or missed pick ups. In addition, Pronzini also finds substitute drivers when the Rattos are not available to handle such calls. Pronzini has also split routes among drivers.

Pronzini has also “recommended” disciplinary actions against employees on approximately 20 occasions in the past two years. The most serious of these instances was an occasion when Pronzini smelled alcohol on a driver’s breath; found a beer bottle in the driver’s truck; took the driver back to the Santa Rosa yard; told the driver to report to the Rattos the next

day; and reported what had happened to the Rattos. The driver was thereupon terminated. Steve Ratto testified that while the Rattos have confidence in Pronzini's judgement, they make their own independent judgements in such matters. Steve Ratto further testified that the other occasions where Pronzini was involved in the disciplining of an employee actually involved only his relaying to the Rattos what he had observed rather than actually making a disciplinary recommendation to them.

Driver Segura testified that Pronzini had informed him of customer complaints such as debris boxes being left on the sidewalks and had reprimanded him for doing so and also for allowing his assistant to drive his truck. Segura further testified that about two years prior to the hearing in this case, when he complained to Pronzini about needing help because his route was too big, Pronzini had responded, "there's the door."

Such evidence raises a substantial issue as to the supervisory status of Pronzini that cannot be resolved based on the record. Accordingly, I re-confirm the decision made in my prior Decision and Direction of Election, that Pronzini may vote subject to challenge. This result does not undermine the unit determination made herein. Thus, Pronzini's status as a supervisor at the Petaluma facility would not affect the basis for this decision. Thus, assuming *arguendo*, that Pronzini were found to be a statutory supervisor over the Petaluma employees because of his authority in the absence of the Rattos, this finding would not alter the fact that the Rattos provide direct daily supervision over employees at that facility as they do over employees at all of their other locations. Further, the Petitioner is no longer contending that the unit should be limited to employees at the Petaluma facility but has amended its petition to include all Employer locations except at Timber Cove Recycling. The mechanics and mechanics' helpers work at both the

Petaluma and Santa Rosa facilities and would thus also be subject to the direct supervision of the Rattos at the Santa Rosa location. Likewise, while some Timber Cove Recycling employees work at Petaluma, most work at the Santa Rosa facility and at buy back centers and would thus also be subject to the direct supervision of the Rattos even if they were sometimes subject to the supervision of Pronzini at the Petaluma facility. Accordingly, the decision to vote Pronzini subject to challenge does not undermine the unit determination decision herein.

As indicated above, the Petitioner also asserts that Lead Mechanic Roy is a statutory supervisor and the Employer takes the opposite position. With regard to Roy, the record shows that Roy is a mechanic with 30 years of experience who spends 60% of his time performing hand-on mechanical work and the other 40% of his time dealing with parts suppliers and doing DMV inspections. While Roy may decide what repairs need to be made or may direct the work of the other mechanics in the Rattos' absence, the record does not disclose that this is done with sufficient regularity to make Roy a supervisor. Further, it shows that work assignments are done largely through agreement among the mechanics based on their respective specialty areas. Thus, the record does not support that Roy utilizes any independent judgement in making such decisions. Finally, while Roy has made hiring recommendations, the record does not disclose that they have been effective. In sum, the record does not support a finding that Roy is a statutory supervisor and he will not be excluded from the unit on that basis. I find no basis for reopening the record to take further evidence on this issue, and I deny the Petitioner's motion in this regard.

With regard to Mattos, the Petitioner contends that he is a full-time container driver. He also serves as a lead man on five garbage routes for Novato Disposal to ensure that

there are enough employees to handle the routes. If there are not enough drivers available, Mattos notifies Steve or James Ratto to find relief drivers. Mattos is hourly paid and there are other drivers who are paid at a higher wage rate than Mattos. Driver Alberto Segura testified that Mattos has informed him of customer complaints such as debris boxes that have been left on the sidewalk. Driver Enrique Delgado similarly testified that Mattos had warned him about trash or debris flying off his truck. According to Delgado, Mattos had told him on this occasion that he could “have problems with the city.” Such evidence does not establish that Mattos is a statutory supervisor. Rather, Mattos is a full-time container truck driver who is also a lead man, possessing limited authority during periods when the Rattos are absent but who possesses no real authority to take actions, make decisions, or effectively recommend decisions affecting employees of the Employer. His authority is limited to routine matters and to acting as a conduit of information to James and Steve Ratto. Accordingly, I find that Mattos is not a statutory supervisor and he will not be excluded from the unit on that basis.

In sum, as stated above, the record supports that the employees at all locations herein, including the mechanics, mechanics’ helpers and the Timber Cove Recycling employees, are supervised by the Rattos.

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 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 Novato Disposal, receive paychecks

from the Ratto Group that do not bear any indication as to the particular company for which they work.⁵

Other Working Conditions. Drivers begin work at various starting times ranging from 3 a.m. to 6 a.m. Mechanics work from 5 a.m. 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 p.m. 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 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 Timber Cove Recycling 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

⁵ The record reflects that since January 1, 1999, the Ratto Group has paid Novato Disposal employees separately because of a requirement imposed by the City of Novato in order to measure its contract costs.

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), enf’d on other grounds, 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.””

As stated by the Board in Overnite Transportation, *supra*, “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).

The test applied by the Board to determine whether an employee shares a community of interest with other unit employees is whether there are (1) differences or similarities in wages, compensation and benefits; (2) whether that employee shares common supervision with other unit employees; (3) whether that employee has similar hours of work as other unit employees; (4) differences or similarities in qualifications, training and job skills; (5) job functions; (6) frequency of contact with other unit employees; (7) functional integration and interchange with other unit employees; and (8) bargaining history. See P.J. Dick Contracting, Inc., 290 NLRB 150, 151, 1988); Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

As indicated above, the Board in its Decision and Order found that the Employer had rebutted the single facility presumption and remanded this case to the Regional Director to determine an appropriate unit in light of its finding. The Petitioner thereupon amended its petition to include drivers and drivers' helpers at all locations but excluding employees of Timber Cove Recycling, mechanics and mechanics' helpers, and office clerical employees.

The Employer contends that the petitioned-for unit is inappropriate and 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, but excluding from the unit employees at two other companies that are also owned by the Ratto Group, San Anselmo Refuse Fairfax Garbage Disposal, each of which operates out of the Petaluma yard and each of which has a separate collective bargaining agreement with the Petitioner covering its respective drivers and drivers' helpers.

The application of these factors to the instant case shows that 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; the similarity of employee skills, functions and working conditions at all locations; and the similarity of employee wages, fringe benefits and working conditions, except with regard to the employees of 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. In addition, with the exception of employees at these two companies, all employees at all other locations who are in the same classifications work similar hours and

receive similar training. Finally, as discussed above, the overall level of employee interchange and contact appears to be significant among employees of all the Ratto Group companies, except with regard to these two represented facilities.

Specifically, with regard to the issue of whether Timber Cove Recycling employees should be included in the unit, the record shows that these employees work in the same locations and have the same supervision as do other unit employees. In addition, there has been a significant level of interchange between employees working as recycle laborers/ buy back attendants for Timber Cove Recycling and other unit positions. Further, there is a high level of functional integration with regard to the work of Timber Cove Recycling. It handles the recycling of materials for all of the Ratto Group's other companies and trucks from those companies deliver recyclable materials to the recycle centers for sorting and shipping to buyers. Further, the transportation of such sorted recyclable materials is often handled by drivers for other Ratto Group companies. Timber Cove Recycling receives a percentage of the revenue per ton for such recycled materials from other Ratto Group companies. In addition, because drivers of other companies drop off and pick up recycle materials from Timber Cove Recycling employees, there appears to be a high level of daily contact between these employees and other unit employees. In addition, the pay rates of the Timber Cove Recycling employees are comparable to those of other unit employees and they are eligible for the same benefits.

In sum, I find that the record discloses a substantial community of interest between the recycle laborers, bailers and buy back attendants employed by Timber Cove Recycling and the petitioned-for employees which warrants the inclusion of these employees in the unit, based on the fact that they work at the same facilities; have common supervision; have a significant level

of interchange and contact; perform work which is functionally integrated; and have comparable pay rates and similar benefits as other drivers and drivers' helpers in the unit. Accordingly, the Timber Cove Recycling employees are hereby included in the unit.

The Mechanics and Mechanics' Helpers. The record discloses that the mechanics and mechanics' helpers work in the same locations (Petaluma and Santa Rosa) as do other employees in the unit; they share common supervision; they have regular contact with drivers and other unit employees in performing their daily jobs; and they have significant interchange with other employees included in the unit. Thus, one of the seven mechanics employed at the time of the hearing works as a driver on an as-needed basis. One of the mechanics' helpers frequently works as a recycle center laborer and rear loader helper. There are also several examples of mechanics' helpers who became drivers for the Employer. Further, mechanics are paid wage rates comparable to those of other employees and they receive similar benefits. While there is no dispute that the mechanics perform major mechanical work and that some of them such as Roy, have many years of experience in the business, no party has contended that they constitute a separate craft unit.

Thus, I find that the record evidence warrants the inclusion of the mechanics and mechanics' helpers in the unit based on their working at the same locations; common supervision; substantial level of interchange and contact with other unit employees; and their comparable wage rates; as well as the highly integrated nature of the Employer's operations.

In sum, I find that the recycle laborers, bailers and buy back attendants employed by Timber Cove Recycling, as well as the mechanics and mechanics' helpers employed by the Ratto

Group, should be included in the unit with the other petitioned-for employees (i.e., drivers and drivers' helpers) from the eight Ratto Group companies as set forth herein.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, drivers' helpers, mechanics, mechanics' helpers, recycle laborers, bailers, and buy-back attendants employed by Ratto Group Corporation, Inc., d/b/a Novato Disposal Service, Inc., Sunrise Garbage Service, Windsor Refuse and Recycling, Pacific Coast Disposal, West Sonoma County Transfer, West Sonoma County Disposal, Timber Cove Recycling and Total Waste Systems, Inc.; excluding employees of Fairfax Garbage Disposal, Inc. and San Anselmo Refuse and Recycling, Inc., guards and supervisors as defined in the Act.

DIRECTION OF ELECTION⁶

An election by secret ballot shall be conducted by the undersigned among the employees in the unit herein 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. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as

⁶ Because the unit herein differs from and is substantially larger than the unit originally sought by the Petitioner, the Petitioner is given seven days to notify the Regional Director of Region 20 of its desire to proceed to an election in the unit found appropriate and to provide the required showing of interest.

such during the eligibility period and their replacements. 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 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 624, AFL-CIO.

LIST OF VOTERS

In order to insure 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 which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director of Region 20 who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Region 20 Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before November 11, 1999. No extension of time to file this list shall be granted except in extraordinary

circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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 November 18, 1999.

DATED at San Francisco, California, this 4th day of November, 1999.

Robert H. Miller, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735

Decision and Direction of Election
Ratto Group Corporation d/b/a
Novato Disposal Services, Inc. et. al.
Case 20-RC-17513