

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29

BFI WASTE SYSTEMS OF NEW JERSEY,  
INC., BROOKLYN, NEW YORK DISTRICT  
Employer-Petitioner (29-RM-882)<sup>1</sup>

and

LOCAL 813, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO  
Petitioner<sup>2</sup> (29-RC-8714 and 29-UC-465)

and

Case Nos. 29-UC-465  
29-UC-479  
29-RC-8714  
29-RM-882

LOCAL 108, LABORERS INTERNATIONAL UNION  
OF NORTH AMERICA, AFL-CIO  
Intervenor<sup>3</sup>

and

LOCAL 116, PRODUCTION AND MAINTENANCE  
EMPLOYEES UNION  
Intervenor<sup>4</sup>

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The name of the Petitioner, Local 813, International Brotherhood of Teamsters, AFL-CIO, herein called Local 813, appears as amended at the hearing.

<sup>3</sup> During the hearing, counsel for Local 108, Laborers International Union of North America, AFL-CIO, herein called Local 108, moved to amend the formal papers by changing all references from Local 958, Laborers International Union of North America, AFL-CIO, herein called Local 958, to Local 108. Local 108 based this motion on certain facts that led to the merger of Local 958, with other Laborers' locals, including Local 445 and 970. In support of this motion, Local 108 produced a document, dated April 7, 1999, from the International president, Arthur Coia. That document indicates that the memberships of Local 445, 958 and 970 voted by resolution to form a new local, Local 108. A new charter was issued reflecting the merger. See Intervenor Exhibit 1. Counsel for Local 108 indicated on the record that after the merger, Local 108 continued to represent the employees of the Employer that had been covered under Local 958's contract. Counsel for Local 813 objected to the motion to amend, claiming that the charter was hearsay and that the document was "inadequate to show that the merger was handled according to what would be required to have Local 108 succeed the interests of Local 958, which is an actual vote by members of that Union." Despite this representation by counsel, the document produced by Local 108 specifically refers to a vote by the membership. Although Local 813 claims the document is hearsay, it appears to be an authentic document signed by the president of the International and refers to a vote by the membership. Local 813 has provided no concrete evidence or even an offer of proof to support its assertion that there was no vote by the membership. Additionally, I note that Local 108 has taken over the representational responsibilities of the unit formerly represented by Local 958. Also noteworthy is that Local 813 stipulated to the labor organization status of Local 108. Based on all of the foregoing, I grant Local 108's motion to intervene in this proceeding based upon its contract with the Employer, which is discussed more fully below.

<sup>4</sup> Local 116, Production and Maintenance Employees Union, herein called Local 116, intervened in this proceeding based upon a card showing.

ORDER DISMISSING PETITIONS IN 29-UC-465, 29-UC-479 AND 29-RC-8714  
AND DECISION AND DIRECTION OF ELECTION IN 29-RM-882

Upon petitions duly filed under Section 9(b) and (c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Emily DeSa, a Hearing Officer of the National Labor Relations Board, herein called 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 finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that BFI Waste Systems of New Jersey, Inc., Brooklyn, New York, herein called the Employer, is a New Jersey corporation engaged in trash collection and recycling within the five boroughs of New York City. During the past year, which period is representative of its operations generally, the Employer purchased and received at its various facilities in New Jersey and New York, goods, supplies and materials valued in excess of \$50,000 directly from points outside the State of New York.

Based on the foregoing and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

The essence of the dispute herein arises from the Employer's purchase of two facilities, one in New Jersey, and one in Brooklyn, New York, where employees at both facilities were represented by different labor organizations. In this regard, the evidence

shows that sometime in 1995, the Employer purchased a facility located in New Jersey, which was renamed BFI Metro New York District.<sup>5</sup> The employees who were working for the predecessor employer at the New Jersey facility had been represented by Local 813. The record established that sometime in 1995, the Employer recognized Local 813 as the collective bargaining representative of all drivers and helpers/chauffeurs employed by it at the New Jersey facility. Subsequently, the Employer and Local 813 entered into a collective bargaining agreement, effective by its terms from January 1, 1995, through November 30, 1996, covering the drivers and helpers/chauffeurs. That contract contains a “letter of understanding” which states that the recognition clause of the contract “shall not cover mechanics and yardmen.” However, the same letter of understanding states that “if the Employer establishes a facility in New York City or Westchester County...[the recognition clause] shall cover the mechanics and yardmen who perform work out of that facility.”<sup>6</sup> At the time that the Employer and Local 813 entered into the 1995-1996 contract, the Employer had not yet commenced any operations within New York City. The record established that the Employer employed approximately 36 drivers and helpers represented by Local 813 at the New Jersey facility. It should be noted that after the 1995-1996 contract expired, the Employer and Local 813 entered into a successor collective bargaining agreement, effective by its terms from December 1, 1996, through November 30, 1999. That contract contains the same letter of understanding regarding the inclusion of the mechanics and yardmen upon the Employer’s purchase of any New York City facility.

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<sup>5</sup> Although the testimony of the witnesses established that the facility was located in Fairview, New Jersey, the contract covering those employees indicates that the facility was located in Elizabeth, New Jersey. The precise location of the New Jersey facility has little bearing on the result herein.

<sup>6</sup> The job duties and responsibilities of “yardmen” are not indicated in the record.

On July 1, 1996, the Employer purchased an entity referred to in the record as the Lostrito facility located at 72 Scott Avenue, Brooklyn, New York, renamed by the Employer as BFI of New York, Brooklyn District.<sup>7</sup> The employees employed by the predecessor employer at the Scott Avenue facility were represented by Local 958, now renamed Local 108. The record established that the Employer recognized Local 958 and such recognition is embodied in a collective bargaining agreement effective by its terms from July 1, 1996, through June 30, 1999. The recognition clause of that agreement indicates that Local 958 represents all full-time and regular part-time drivers, plant personnel, mechanics and lead men employed by the Employer at the Scott Avenue facility. With regard to the specificity of the classifications covered by the Local 958 contract, it is clear from the record that the Local 958 contract covers the following classifications: drivers, driver helpers, mechanics, mechanic helpers, welders, pickers, sorters, bailers, forklift operators, laborers, traffic directors, machine operators (also referred to in the record as heavy equipment operators), and painters.<sup>8</sup> The record established that there are approximately 27 drivers and helpers represented by Local 958 at the Scott Avenue facility.<sup>9</sup> According to Employer's Exhibit 4, the 27 drivers and

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<sup>7</sup> It should be noted that there is a second location, at 105-15 Thames Street, which is considered part of the Employer's Scott Avenue location. The two facilities are approximately 6 blocks away from one another. The Thames Street facility is essentially a transfer station while the Scott Avenue facility is a recycling plant. It is clear from the record that the bulk of the Employer's employees work at the Scott Avenue location while there are about 4 traffic directors and 2 equipment operators that work at the Thames Street location. It is also clear from the record that all Thames Street employees clock in at the Scott Avenue location. All parties agreed that the Thames location is part and parcel of the Scott Avenue location and any voting group would encompass employees employed at both locations. Tr. 356. Thus, hereinafter, when referring to the Scott Avenue location, such a reference includes the Thames Street location.

<sup>8</sup> At the hearing, the Employer, Local 108 and Local 116 all agreed that the Local 958 contract covered these classifications. Local 813's counsel stated, on the record, that she "had no knowledge as to whether the unit is accurate" (Tr. 25), but did not elicit any testimony contradicting the statements made by the Employer, Local 108 and Local 116.

<sup>9</sup> See Employer Exhibit 4.

helpers, together with the remaining classifications noted above, total a unit of about 215 employees.

On November 11, 1996, a few months after the Employer's July 1996, purchase of the Scott Avenue facility, and *after* Local 958 and the Employer entered into a collective bargaining agreement covering the Scott Avenue employees, Local 813 filed a petition in Case No. 29-RC-8714, seeking to represent all full-time and regular part-time chauffeurs, helpers, mechanics, welders and machine operators employed by the Employer at its Scott Avenue facility. By letter dated December 2, 1996, the undersigned deferred any formal action regarding the petition in Case No. 29-RC-8714 to permit utilization of the No Raiding Procedures process under Article XX of the AFL-CIO constitution. The RC petition was not processed further until the Employer filed a UC and an RM petition on April 30, 1999, which is described more fully below. However, at the hearing in the instant matters, Local 108's counsel asserted that Local 958's July 1, 1996, through June 30, 1999, contract operated as a bar to Local 813's petition in Case No. 29-RC-8714, as it was in effect at the time the petition was filed and said contract covers the employees sought in the petition. It appears from the record, and Local 813's brief, that it does not dispute that contention. For instance, Local 813 does *not* argue that Local 958's contract does not bar the petition in 29-RC-8714 because it was not enforced. Indeed, at no point during these proceedings has Local 813 explained why Local 958's 1996 to 1999 contract should not operate as a bar to the petition in 29-RC-8714. Based on the record herein, I conclude that Local 958's July 1, 1996, through June 30, 1999, contract bars the processing of 29-RC-8714, which was clearly filed by

Local 813 during the life of Local 958's 1996 to 1999 contract. Accordingly, the petition in Case No 29-RC-8714 is hereby dismissed.

With respect to the two UC petitions filed herein, there is some additional background information that serves to explain the basis of those petitions and the timing of their filing. As noted above, the Employer purchased the Scott Avenue facility in July 1996. At that time, it had already been operating the New Jersey facility since 1995. It is undisputed that both facilities employed drivers and drivers' helpers, while the Scott Avenue facility had many other classifications, as noted above, that were covered by the Local 958 contract. However, the record established that sometime in the summer of 1998, the Employer integrated the operations of the New Jersey and Scott Avenue facilities and, as of October 1998, all operations for garbage collection in the five boroughs of New York City were working out of the Scott Avenue location.<sup>10</sup> In this regard, it is undisputed that the 36 drivers and helpers employed by the Employer at the New Jersey location, who are represented by Local 813, were transferred to the Scott Avenue facility.

On February 10, 1998, prior to the final consolidation of operations, Local 813 filed a UC petition in Case No. 29-UC 465. In its petition, Local 813 seeks to accrete drivers, helpers, mechanics and yardmen, then represented by Local 958 at the

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<sup>10</sup> With respect to the issue of consolidation of operations, the record is not clear as to precisely when the merger of the two facilities was completed. In this regard, the Employer's witness, Dennis Patano (vice president of marketing), testified that in October **1996**, the Employer relocated the New Jersey operations to the Scott Avenue location. (Tr. 213). And, it appears that the Employer concedes in its brief, that sometime in November 1996, it relocated the Local 813 drivers from New Jersey to the Scott Avenue location. However, it appears from the record that even after this relocation, the Employer continued to operate two separate divisions out of Scott Avenue; the BFI Brooklyn District (represented by Local 958) and the BFI Metro District (represented by Local 813). According to Pantano, it was not until the summer of 1998 that the Employer commenced the process of merging the two districts by integrating accounting functions, routes, administration and supervision. Thus, while it appears that Local 813 drivers had been

Employer's Scott Avenue location, to its unit of drivers and helpers that, at the time of the filing of the UC petition, had still been working in New Jersey.<sup>11</sup> Based on the record, it appears that Local 813 was seeking to accrete 27 of Local 958's drivers and helpers and approximately 12 of Local 958 mechanics, all of whom were working at the Scott Avenue location.<sup>12</sup> By letter dated February 18, 1998, the Region deferred any formal action regarding the petition in Case No. 29-UC-465 to permit utilization of the settlement provisions of the No Raiding Procedures under Article XX of the AFL-CIO constitution.<sup>13</sup> Recently, on April 30, 1999, the Employer filed a unit clarification petition in 29-UC-479, asserting that the proposed unit should include all drivers, driver helpers, mechanics, mechanic helpers, welders, pickers, sorters, bailers, forklift operators, laborers, traffic directors, machine operators (also referred to in the record as heavy equipment operators), and painters employed by the Employer at the Scott Avenue location.<sup>14</sup>

There exists a number of reasons to dismiss the unit clarification petitions filed by Local 813 and the Employer. First, Local 813 is seeking to accrete a total of 39

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working at the Scott Avenue location since November 1996, the Employer's operations were not completely consolidated until the summer of 1998.

<sup>11</sup> On the face of its petition, Local 813 contends that the "present unit consists of drivers, helpers, mechanics and yardmen." This is a clear misstatement of the recognition clause of the 1995 to 1996 contract, and the 1996 to 1999 contract, which, as noted above, only includes drivers and helpers. Moreover, there is a side agreement that specifically excludes mechanics and yardmen. Thus, to claim that Local 813's New Jersey unit specifically included mechanics and yardmen, in addition to drivers and helpers, is erroneous.

<sup>12</sup> Although Local 813's UC petition refers to "yardmen" the Employer does not employ anybody in such classification and it is unclear from the record whom specifically Local 813 is referring to when it used this term.

<sup>13</sup> In deferring the UC to the Article XX procedures, the Region informed the AFL-CIO of the pending dispute in 29-RC-8714, which had been deferred to Article XX in December 1996, as noted above.

<sup>14</sup> On the face of its UC petition, the Employer claims that the proposed unit should include all plant personnel, mechanics and lead men employed by the Employer at Scott Avenue. Although the petition was inartfully worded, the Employer has made its position clear on the record, and in its brief, that the unit should include all drivers, drivers helpers, mechanics, mechanic helpers, welders, pickers, sorters, bailers, forklift operators, laborers, traffic directors, machine operators (also referred to in the record as heavy equipment operators), and painters employed by it at the Scott Avenue location.

employees (27 drivers and 12 mechanics) to its unit of only 36 drivers and helpers.<sup>15</sup> The Board has long held that it is inappropriate to accrete a larger group of employees to a smaller group of employees. Panda Terminals, Inc., 161 NLRB 1215, 1223 (1966). Second, Local 813 is attempting to accrete an entire classification of mechanics that it never represented at the New Jersey facility. Local 813 argues that it and the Employer entered into a “letter of understanding,” appended to their contracts, stating that mechanics and yardmen shall be included in the unit if the Employer established a facility in New York City, as it did by its purchase of the Scott Avenue location. However, it would be inconsistent with the basic principles of the Act to compel a group of 27 drivers and 12 mechanics, a total of 39 employees, to accept representation by Local 813 when they had been previously represented by Local 958.

Third, and equally significant, moreover, is that it appears that the Employer’s integration of the New Jersey and Scott Avenue facilities raised a question concerning representation and not a unit clarification issue. In the case of a consolidation of operations where the integration of different groups of employees is complete, the representational status of the different groups is a factor the Board considers in applying its accretion policy. When two groups of employees represented by different labor organizations are consolidated the Board is faced with conflicting representational claims. In such a case, the Board will not impose a union “where neither group of employees is sufficiently predominant to remove the question concerning overall representation.” Martin Marietta Chemical d/b/a Martin Marietta Refractories Company,

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<sup>15</sup> In its brief, Local 813 claims that it attempting to accrete 27 Local 958 drivers to its unit of 37 drivers, implying that it was, indeed, seeking an accretion of a smaller group of employees to a larger group. However, Local 813 ignores the fact that its UC petition not only seeks to accrete the 27 Local 958 drivers

270 NLRB 821, 822 (1984). In such a case, the Board will direct an election among the consolidated group of employees to determine their bargaining representative. The instant case presents a factual pattern that warrants a similar conclusion. Due to the consolidation of the Employer's New Jersey and Scott Avenue locations, two labor organizations, Local 813 and Local 958, now Local 108, represent drivers and helpers the Scott Avenue facility. It is clear that among that group of employees, neither labor organization is predominant; one represents 36 employees and the other one represents 27 employees. Accordingly, I hereby dismiss the petitions in Case No. 29-UC-465 and Case No. 29-UC-479. 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 warranting the resolution of this issue through the election process.

3. The labor organizations involved herein claim to represent certain employees of the Employer.

Although I have dismissed Local 813's RC and UC petitions, there remains the Employer's RM petition in Case No. 29-RM-882, filed on April 30, 1999. During the hearing, Local 813 argued that the petition is barred by its most recent contract with the Employer, which, as noted above, is effective by its terms from December 1, 1996 through November 30, 1999. Local 108 took no position as to whether Local 813's contract bars the RM, and only contended that the RM was timely vis-à-vis Local 958's contract with the Employer, which expires on June 30, 1999. Local 116 took no position regarding this issue.

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but also the 12 mechanics and helpers, making the accreted group larger than the group Local 813 currently represents.

In Massachusetts Electric Company, 248 NLRB 155, 157 (1980), the Board confronted a similar issue. After a merger of operations, the employer in that case was confronted with competing representational claims at the merged location by employees represented by different labor organizations and covered under different collective bargaining agreements. The Board held:

In these circumstances, statutory policies will not be effectuated if, through the application of ordinary principles of accretion, a bargaining agent is imposed on either unit of the newly integrated operation found appropriate...Accordingly, the current contracts between the Employer and the Unions are not a bar to the holding of elections in the units described below.

The Board reached a similar conclusion in Martin Marietta, supra, where the Board held that even if the labor organizations' collective bargaining agreements remained in effect, it would not bar an election. Supra at 822. Similarly, in Boston Gas Co., 221 NLRB 628, 629 (1975), an employer created a new operation from two newly acquired facilities where employees were historically represented by different labor organizations with current contracts with the employer. The Board held that said contracts do not bar the processing of an RM petition. Based on the Board's rationale in the foregoing cases, it appears that Local 813's contract with the Employer, which expires on November 30, 1999, does not bar the processing of the RM petition.<sup>16</sup>

4. With respect to the unit issues raised by the RM, the Employer, Local 108 and Local 116, all take the position that the appropriate unit should include all drivers,

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<sup>16</sup> It should be explained as to why Local 958's 1996 to 1999 contract bars the processing of 29-RC-8714, but Local 813's contract does not bar the processing of 29-RM-882. This is because Local 813 filed its petition in November 1996, a few months after the Employer had purchased the Scott Avenue facility, had entered into a collective bargaining relationship with Local 958, but, most importantly, had *not yet* consolidated the operations with the New Jersey facility. It is this consolidation and/or merger that was finalized in the summer of 1998 that forms the basis for my conclusion that a question concerning representation *now* exists due to these changed circumstances, whereas that QCR may not have existed in November 1996, when Local 813 first filed its RC petition.

driver helpers, mechanics, mechanic helpers, welders, pickers, sorters, bailers, forklift operators, laborers, traffic directors, machine operators (also referred to in the record as heavy equipment operators), and painters employed by the Employer at the Scott Avenue location.<sup>17</sup> It is essentially undisputed that this is a wall-to-wall unit, inclusive of all of the Employer's employees employed at Scott Avenue.<sup>18</sup> Local 813 argues that the only appropriate unit includes drivers, driver helpers, mechanics, mechanic helpers and welders employed by the Employer at the Scott Avenue facility.

In support of its contention regarding the proposed unit, Local 813 contends that the drivers, drivers helpers, mechanics, mechanics helpers and welders have similar wage rates, hours, job skills that differ from plant personnel, separate supervision, different areas of work, and no work related interaction with plant personnel. It is undisputed that the Employer's operation is divided into two parts, collection and post collection. Those in the collection operation, such as the drivers and drivers helpers, collect trash in New York City's five boroughs, and dump the trash at various locations throughout the city. At the end of the day, the drivers dump recyclable materials at the Employer's Scott Avenue facility (i.e., in the recycling plant), and other waste items at the transfer station at Thames Street. The recycling plant and transfer stations are considered the post collection element of the Employer's operation – the place where trash is sorted and recycled. The collection side of the operation is supervised by Galbraith, Ellis and Bemis, whereas the post collection operation is supervised by Van Woert. There is also a maintenance manager, Hulbell, who undisputedly supervises the maintenance aspects of

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<sup>17</sup> Although the Employer's petition, on its face, does not list all of these classifications, the Employer amended its petition on the record to include the classifications noted above.

<sup>18</sup> In its brief, even Local 813 agrees that the unit proposed by the other parties is indeed a wall to wall unit.

the collection and post collection operation, i.e., the mechanics and welders report to him when repairing trucks for the drivers and recycling equipment such as hi-los, forklifts and bailers, all located on the post collection side of the operation.<sup>19</sup>

Local 813 argues that the mechanics, mechanic helpers and welders work on the collection and post collection side of the operation. As noted above, it is undisputed that the mechanics and welders repair trucks and trash containers, which is considered collection side equipment, and these employees occasionally go on the road to repair vehicles and containers when needed. Local 813 argues that the drivers and helpers *only* interact with mechanics, mechanic helpers and welders when their vehicles require repair, and, by contrast, they do not interact with any plant personnel on any regular basis. However, it should be noted that mechanics and welders not only repair trucks and containers; they also repair post collection equipment, such as forklifts and bailing machines. Thus, mechanics and welders do not only interact with drivers; they also interact with plant personnel when repairing equipment there. Despite Local 813's contention that drivers never interact with plant personnel, there is some record testimony from Galbraith, the Employer's vice president of the collection operation, that on a daily basis, the Employer substitutes pickers/sorters as driver helpers, due to poor attendance by Local 813's helpers. (Tr. 60). In its brief, Local 813 claims that this interchange by pickers/sorters is minimal. However, Local 813 concedes that substitution by pickers/sorters for absent helpers has occurred two to three times in a three week period.

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<sup>19</sup> In its brief, Local 813 argues that the unit it proposes should be considered "skilled" inasmuch as the drivers and mechanics require commercial driver licenses (herein called CDLs), they receive a higher rate of pay and they are the only classifications requiring post accident drug testing. The fact that mechanics and drivers need CDLs, or that their rate of pay is higher than other plant personnel, is insufficient to establish that they are so skilled so as to warrant their own unit.

It is well established that a certifiable bargaining unit need only be an appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7<sup>th</sup> Cir. 1951); Omni Dunfey Hotel, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987); P.J. Dick Contracting, 290 NLRB 150 (1988); Dezcon, Inc. 295 NLRB 109 (1989). The Board’s task, therefore, is to determine whether the unit sought by the union, or unions, seeking Section 9(a) status is an appropriate unit, even though it may not be the only appropriate unit or the “ultimate” unit. In determining the appropriate unit in an RM context, the Board has given great weight and deference to the collective bargaining history between the parties. See Milwaukee Independent Meat Packers Association, 223 NLRB 922, 924 (1976), where, upon an RM petition filed by a multiemployer association, the Board found the appropriate unit to be the multi-employer unit, despite the union’s contention that single-company units were appropriate. Also see Westinghouse Electric Co., 89 NLRB 8, 10 (1950), where the Board indicated, in an RM context, that it is “most hesitant to disturb [plant bargaining units] and will do so only in those cases where the Act itself or established policy requires such change.” See also General Electric Co., 89 NLRB 726, 730-731 (1950).

Bearing these principles in mind, it appears that the unit sought by Local 813 is not appropriate as it attempts to carve out mechanics, mechanic helpers and welders who have a history of representation by Local 958 in a much larger unit of all other recycling plant personnel. In determining the appropriateness of a bargaining unit, prior bargaining history is given substantial weight. As a general rule, the Board is reluctant to disturb a unit established by collective bargaining which is not repugnant to Board policy or so

constituted as to hamper employees in fully exercising rights guaranteed by the Act. Trident Seafoods, Inc., 318 NLRB 738, 740 (1995), P.J. Dick, supra, at 151 (“units with extensive bargaining history remain intact unless repugnant to Board policy”). A party challenging a historical unit as no longer appropriate has a heavy evidentiary burden of showing that the historical unit is no longer appropriate. *Id.* Compelling circumstances are required to overcome the significance of bargaining history. Children’s Hospital, 312 NLRB 920, 929 (1993). In my view, Local 813 has not met the burden of showing that the Local 958 unit is no longer appropriate. That unit has existed for at least one contract period. It is that bargaining history which caused the 3 out of the 4 parties here to seek an election among all of the employees historically represented by Local 958. Local 813 attempts to distinguish this history by claiming that the drivers, mechanics and welders are the only employees who work on the collection side of the Employer’s operation, and, therefore, they are separately supervised. However, Local 813’s representation in this regard is not entirely accurate. Rather, the record reflects that mechanics and welders not only work on the drivers’ trucks, but they also work on the equipment located inside the recycling plant, and have contact with employees working there. Additionally, the mechanics and welders are separately supervised by a maintenance manager, Hubell, who is responsible for maintenance of *all* equipment at the Scott Avenue location, regardless of its placement in the collection or post-collection side of the operation. As for the lack of interchange or work related contact between the drivers/helpers and the other plant personnel, it is true that mechanics and welders may have some contact with drivers when repairing the vehicles, either on the road or at the Employer’s facility itself. But, there are also occasions where pickers/sorters function as drivers helpers. I am

cognizant of the fact that the record herein establishes that drivers and helpers spend most of their day away from the Employer's Scott Avenue location, and, overall, there is little work related contact between the drivers/helpers and the employees who remain at the recycling plant all day. In this regard, I note that the Board has found that drivers may constitute an appropriate unit apart from warehouse and production employees unless they are so integrated that they have lost a separate identity. Overnite Transportation Co., 322 NLRB 723 (1996); Mc-Mor-Han Trucking, 166 NLRB 700, 701 (1967); E.H. Koester Bakery Co., Inc., 136 NLRB 1006, 1011 (1962). However, no labor organization herein seeks to represent drivers and helpers in a separate unit.<sup>20</sup> Based on the above, I conclude that the appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act includes:

All full-time and regular part-time drivers, driver helpers, mechanics, mechanic helpers, welders, pickers, sorters, forklift operators, heavy equipment operators, machine operators, traffic directors, bailers, laborers and painters employed by the Employer at its 72 Scott Avenue and 105-15 Thames Street, Brooklyn, New York, locations, excluding office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

### **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 employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work

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<sup>20</sup> At footnote 1 of its brief, Local 813 proposes for the first time an alternative unit of drivers and helpers. This was clearly not the position Local 813 took during the two day hearing and the two other labor organizations have not been given any opportunity to address this proposal or elicit further testimony on the issue.

during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or 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 to vote shall vote whether they desire to be represented by Local 116, Production and Maintenance Employees Union, Local 108, Laborers' International Union of North America, AFL-CIO, Local 813, International Brotherhood of Teamsters, AFL-CIO, or by no labor organization.

#### **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 the 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, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) 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 undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before June 28, 1999. No extension of time to file the list may be granted, nor shall the filing of a

request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **NOTICES OF ELECTION**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

### **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 July 6, 1999.

Dated at Brooklyn, New York, this 21<sup>st</sup> day of June, 1999.

/S/ ALVIN BLYER

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Alvin Blyer  
Regional Director, Region 29  
National Labor Relations Board  
One MetroTech Center North, 10th Floor  
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355-7700  
385-7501 et. seq.  
420-1200 et. seq.