

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

WASTE MANAGEMENT OF NEW YORK, LLC

Employer <sup>1</sup>

and

LOCAL 813, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO

Petitioner

and

WASTE MATERIAL, RECYCLING AND GENERAL  
INDUSTRIAL UNION LOCAL 108, L.I.U.N.A.,  
AFL-CIO

Intervenor <sup>2</sup>

Case No. 34-RC-1730

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>

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<sup>1</sup> The name of the Employer appears as corrected on the record.

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

4. No 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, for the following reasons.

The Petitioner seeks to represent the drivers, helpers mechanics and other shop employees employed by the Employer and working out of its recently acquired Chester, New York facility. The Employer and the Intervenor have moved for the dismissal of the petition, contending that it is barred by a May 4, 1999, contract covering the petitioned-for employees. In addition, the Employer contends that the petition is also barred by a 1996 contract with the Intervenor which predates the acquisition of the Chester facility. The instant petition was filed on May 25, 1999.

The Employer, which operates various facilities in New York State, is engaged in the collection and disposal of solid and recyclable waste. The Chester facility, a sanitation depot, opened in the summer of 1998 by its owner at the time, USA Waste Services (hereinafter referred to as USA). Later that year the Employer acquired the Chester facility and three transfer stations also operated by USA, when USA merged with, and became part of, the Employer's operations.<sup>4</sup> Thereafter, on or about January 1, 1999, the Employer purchased the stock of Eastern Environmental Systems (hereinafter referred to as Eastern). With the purchase of Eastern's stock, the Employer assumed control of Eastern's facilities which included a sanitation depot/transfer station in Goshen, New York, and another unidentified facility in Poughkeepsie, New York.

Prior to its sale to the Employer, Eastern had a labor agreement with the Intervenor covering the employees at the Goshen and Poughkeepsie facilities. That agreement, which runs from November 1, 1996, to October 31, 1999, was adopted by

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<sup>2</sup> The Intervenor's name appears as reflected in the record's official exhibits.

<sup>3</sup> Although the record inadvertently fails to contain commerce information, I have been administratively advised that the Board's jurisdiction is uncontroverted.

<sup>4</sup> These transfer stations, which are located in Newburgh, Port Jervis, and West Point, New York, were not owned by USA, and are not owned by the Employer.

the Employer which continued to recognize the Intervenor as the bargaining representative of those employees.<sup>5</sup>

It appears that in February or March of 1999, the Employer began to transfer most of its Goshen operations to the Chester facility which is located six miles away. Thereafter, on May 4, 1999, although the Employer had not yet transferred any unit employees from Goshen to Chester, the Employer and the Intervenor entered into a new three-year multi-facility agreement, effective as of May 1, 1999, covering all of the Employer's employees working in Orange County, New York (hereinafter also referred to as the Orange County unit). The May 4, 1999, agreement is a 13-page document consisting of: a 1-page typewritten cover sheet signed by both parties and dated May 4, 1999, 11 typewritten pages with handwritten notes, containing substantive terms and conditions of employment, and a 1-page handwritten wage scale. The cover sheet also contains the following language:

Final contractual language reflecting changes consistent with the attached agreement, shall be prepared within two weeks of today and shall be retroactive to May 1, 1999.

The "final" document, consisting of 17 typewritten pages, was signed and dated by the parties on June 3, 1999. It contains what appear to be only a few minor changes to the May 4 agreement.

The Goshen and Chester facilities, and the three transfer stations whose operations the Employer assumed when it acquired USA, are all located in Orange County, New York, and are thus covered by the new agreement. The Poughkeepsie facility is located in Dutchess County, New York, and is not covered by the new agreement. Apparently, it is still covered by the 1996-1999 contract.

Prior to the execution of the May 4 agreement, the employees at Chester and the three transfer stations were unrepresented. As previously noted, prior to the execution of the May 4 agreement, all of the Goshen employees had been represented by the Intervenor as part of the two-facility unit which also encompassed the employees in Poughkeepsie. That contract contains no provision calling for the accretion thereto of

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<sup>5</sup> The 1996-1999 Agreement was initially entered into by Eastern's predecessor and the Intervenor's predecessor, but has been maintained without any hiatus, by their respective successors.

any newly acquired facilities, and the record contains no evidence of any other agreement which calls for Chester's inclusion in the 1996-1999 contract.

As of May 4, 1999, the new contract's execution date, Chester employed about 50 drivers, mechanics and helpers, the three transfer stations employed a total of 6 or 7 transfer and recycling employees, and Goshen employed between 60 and 70 drivers, mechanics and helpers, and approximately 10 transfer and recycling employees. Although none of Goshen's unit employees had been transferred to Chester when the May 4 agreement was executed, on May 5 or 6, 1999, all of Goshen's unit employees, except its 10 transfer and recycling employees who remained at Goshen, were transferred to the Chester facility.<sup>6</sup>

With regard to the 1996-1999 contract, contrary to the Employer's contention, I find that it is not a bar to this proceeding. In reaching this conclusion I note particularly that the Chester facility is a presumptively appropriate unit (*Gitano Distribution Center*, 308 NLRB 1172, 1175 (1992)), that the presumption has not been overcome, and that there is no evidence that the parties have entered into any agreement to apply this contract to Chester. See *Gitano* supra, at footnote 21.<sup>7</sup>

With regard to the May 4, 1999, agreement, the Petitioner contends that it is not a bar because it does not cover an appropriate unit, because it contemplated changes and was not a final agreement, and because it was executed prior to the transfer of Goshen's employees to Chester.<sup>8</sup>

With regard to the Petitioner's contention that the May 4 contract cannot serve as a bar because it encompasses an inappropriate unit, as I previously indicated, a unit limited to the employees at Chester is presumptively appropriate and the presumption

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<sup>6</sup> The record is silent as to the number or types of job classifications or the number of employees at the Poughkeepsie facility.

<sup>7</sup> Indeed, in view of the parties' subsequent creation of a new unit encompassing Chester, while continuing to maintain a separate unit at Poughkeepsie, it appears that they have relinquished and extinguished any potential claim that the 1996-1999 agreement covered Chester.

<sup>8</sup> The Petitioner does not contend that the May 4 agreement is a premature extension of the 1996-1999 contract. In this regard, as discussed above, I have already determined that the 1996-1999 contract is not a bar because it does not cover the Chester facility. In view thereof, the May 4 agreement does not constitute a premature extension of the 1996-1999 contract. *Michigan Bell Telephone Company*, 182 NLRB 632 (1970).

has not been rebutted. Indeed, it is reinforced by the parties' 1996-1999 contract which included Goshen with Poughkeepsie, as well as by evidence of separate supervision in existence at the three transfer stations and remaining at Goshen. While such factors may also tend to support a finding that the Orange County unit is inappropriate, I find it unnecessary to reach this issue. Thus, even assuming arguendo that the Orange County unit is inappropriate, it is not contrary to any statutory provisions or Board policy which would make it so "inherently inappropriate" as to remove it as a bar to this proceeding. *Airborne Freight Corporation*, 142 NLRB 873 (1963). See also *Corporation de Servicios Legales de Puerto Rico*, 289 NLRB 612 (1988).

With regard to the Petitioner's contention that the May 4 contract cannot serve as a bar because it was not a final agreement, I find that it was not substantially altered by the June 3, 1999, document, and that those changes which were subsequently made do not indicate that the May 4 contract "lacked finality or that its terms were insufficient to govern the parties relationship." *Gaylord Broadcasting Co., d/b/a Television Station WVTM*, 250 NLRB 198, 199 (1980). Furthermore, the fact that the May 4 contract may not have been embodied in a more formal written agreement does not remove it as a bar to this proceeding. *The Bendix Corporation*, 210 NLRB 1026 (1974).

Finally, with regard to the Petitioner's contention that the May 4 contract was entered into before the transfer of Goshen's employees to Chester, it is well established that a contract executed prior to a substantial increase in unit personnel



will not bar an election. *General Extrusion Co.*, 121 NLRB 1165 (1958). More specifically, a contract will bar an election only if at least 30 percent of the unit employed at the time of the hearing and 50 percent of the classifications in existence at the time of the hearing were employed and in existence at the time the contract was executed. *General Extrusion Co.*, supra. In the instant case, inasmuch as it is clear that, at the time of the hearing, in excess of 30 percent of the Orange County unit's personnel and 50 percent of its job classifications had been in existence on May 4 when the contract was executed,<sup>9</sup> the subsequent addition of Goshen's employees cannot serve to remove the contract as a bar to the petition.

Based upon the above and the record as a whole, I find that the May 4, 1999, contract between the Employer and the Intervenor is a bar to the petition, and the motions to dismiss the petition are hereby granted.

#### ORDER

IT IS HEREBY ORDERED that the petition filed in this matter be, and it hereby is, dismissed.

#### Right to Request Review

Upon 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 July 27, 1999.

Dated at Hartford, Connecticut this 13th day of July, 1999.

/s/ Peter B. Hoffman  
Peter B. Hoffman, Regional Director  
Region 34  
National Labor Relations Board

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<sup>9</sup> The total complement of the Orange County unit at the time of the hearing consisted of approximately 137 employees (approximately 50 Chester employees, 6 or 7 transfer station employees, as many as 70 former Goshen employees who had transferred to Chester, and the 10 employees remaining at Goshen) in approximately 7 job classifications. At the time of the hearing, the existing complement on May 4 at Chester and the three transfer stations (viz. 56 or 57 employees) represented over 40 percent of the unit and filled all of its job classifications.