

U.S.A. WASTE MANAGEMENT OF  
CALIFORNIA, INC. 1/

Employer

and

CHAUFFEURS, TEAMSTERS & HELPERS  
LOCAL UNION NO. 150, IBT, AFL-CIO

Petitioner

**20-RC-17606**

**DECISION AND DIRECTION OF ELECTION**

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; hereinafter 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 2/, 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. 3/
3. The labor organization involved claims to represent certain employees of the Employer. 4/
4. 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. 5/
5. 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: 6/

All full-time and regular part-time drivers and utility employees employed by the Employer at its operations yard, at 13083 Grass Valley Avenue, Grass Valley, California; excluding office clerical employees, administrative employees, sales employees, temporary employees, all other employees, guards and supervisors 7/ as defined by the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) 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(s) 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 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

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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 **CHAUFFEURS, TEAMSTERS & HELPERS LOCAL UNION NO. 150, IBT, 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. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 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 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, 901 Market Street, Suite 400, San Francisco, California 94103,

on or before July 19, 2000. 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, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by **July 26, 2000**.

Dated July 12, 2000

at San Francisco, California

/s/ Robert H. Miller  
Regional Director, Region 20

- 1/ The Employer's name is in accord with the post-hearing stipulation of the parties.
- 2/ The parties post-hearing stipulation is hereby received into the record as Board Exhibit 3.
- 3/ The parties stipulated and I find, that the Employer, a California corporation with multiple locations in the Grass Valley area of California, including its main location at 13083 Grass Valley Avenue, Grass Valley, California, is engaged in the business of providing waste removal and waste recycling services to commercial customers and directly to individual customers through contracts with local municipalities and counties. During the calendar year ending December 31, 1999, the Employer derived gross revenue in excess of \$500,000 from direct billings to individual customers for waste disposal and recycling services. During the same period, the Employer purchased and received at its Grass Valley facilities, goods valued in excess of \$50,000 directly from enterprises located outside the State of California. During the same period, the Employer also performed services valued in excess of \$50,000 for municipalities, counties and commercial entities each of which were each engaged directly in interstate commerce. Based on the parties' stipulation to such facts and the record evidence, it is concluded that the Employer 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.
- 4/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 5/ The parties stipulated, and I find, that there is no contract bar to this proceeding.
- 6/ The Petitioner herein seeks to represent a unit comprised of all drivers employed at the Employer's main office and excluding recycle plant, mechanics, office clerical and all other employees as defined by the Act. There are approximately 22 drivers in the petitioned-for unit. The Employer contends that the unit must include all employees at all of its facilities, except office clerical and administrative and supervisory personnel.

Stipulations. The parties stipulated, and I find, that the Employer's District Manager Art Rasmussen and its Operations Manager Bob Elder are statutory supervisors under the Act who are excluded from the unit.

Prior Certification. On February 2, 1998, in Case 20-RC-17354, based on the results of an election in a unit stipulated to by the parties, the Region certified that a majority of valid ballots had not been cast for the Petitioner in the following unit:

All full-time and regular part-time drivers, mechanics and recycle processors employed by the Employer at its Operations Yard, 11229 McCourtney Road, Grass Valley, California; McCourtney Road Recycle Facility, 124741 Wolf Mountain

Road, Grass Valley, California; and Recycle Works, 12301 Loma Rica Drive, Grass Valley, California, facility; excluding office clerical employees, administrative employees, sales employees, temporary employees, 20/20 recycle employees, all other employees, guards and supervisors as defined by the Act.

The Employer's Operation. The Employer operates a refuse removal and recycling business in the Grass Valley, California area. It operates a total of six facilities, herein called the Operations Yard, the Recycle Works, the McCourtney Road Recycle facility, the Raley's facility, the SPD facility and the Washington facility.

Supervision. Stipulated supervisors District Manager Rasmussen and Operations Manager Elder make the final decisions on all personnel matters for the Employer for all employees at all locations. They hire, evaluate and discipline employees at all facilities. When employees at the Operations Yard have questions or problems, they address them to Rasmussen or Elder; at the Recycle Works and at the McCourtney Road facility, employees first approach Elder with their problems. As discussed below, the record supports the conclusion that Driver Supervisor Ron Cornell, who works at its Operations Yard, is also a statutory supervisor who should be excluded from the unit.

Driver Supervisor Ron Cornell. The Employer employs a leadperson/driver at its Operations Yard named Ron Cornell. Cornell drives a fork lift truck and makes bin deliveries. He also directs the second fork lift truck driver and can change his schedule and assign him overtime without asking for prior approval. Cornell has worked for the Employer about 12 years and earns \$1 more an hour than other drivers. According to Rasmussen, Cornell has not had to seek prior approval to make schedule changes and to order overtime for the other fork lift driver for about six years. Thus, on his own authority and even when Rasmussen and Elder are present at the facility, Cornell can direct the other fork lift truck driver to start work an hour early and then work overtime. Usually Cornell does not discuss such changes with Rasmussen or Elder until after they have been made. Cornell is also authorized to direct the utility employee at the Operations Yard to come to work early and to work overtime without seeking prior approval. Cornell has no authority with respect to the other drivers who do not drive fork lift trucks. I find, based on Cornell's possession of authority to order overtime and to schedule the work of the fork lift truck driver and the utility employee, that he is a statutory supervisor with regard to these two employees. Accordingly, Cornell will be excluded from the unit herein found appropriate.

Leadpersons. The Employer employs a leadperson named Jay Stratton at the Recycle Works and Leadperson Darrell Torry at its McCourtney Road facility. No party contends that Stratton or Torry are statutory supervisors and the record does not support such a finding. The employees at these respective facilities report to Stratton and Torry. Neither Stratton nor Torry has authority to discipline or change

the work flow or shifts of employees. Their job is to ensure that the work is getting done at their respective facilities and to notify Operations Manager Elder if there are any problems. Both Stratton and Torry possess Class B drivers licenses and drive trucks for the Employer on an as needed basis. During the three-month period prior to the hearing in the instant case, Stratton was working approximately three days a week as a driver. The record reflects that the Employer uses Torry "on occasion" to drive a roll-off truck when it is short of drivers. When Stratton and Torry drive for the Employer, they are paid at the drivers' pay rate.

The Employer's Facilities: The Operations Yard. At its Operations Yard at 13083 Grass Valley Avenue, Grass Valley, California, the Employer has its administrative offices where District Manager Art Rasmussen works; a truck terminal where trucks are parked and where drivers report; and a shop area where the mechanics work. The Employer also makes repairs on its bins at this facility site and has a wash facility for its trucks. In addition, it handles the transfer of some refuse through this site. In this regard, about sixty percent of the non-recyclable waste collected by the Employer is taken to the Operations Yard and from there it is transported three times a day by an Employer driver to a landfill near Marysville, California. The remaining forty percent of such refuse is taken to the transfer station at the Operations Yard, and then transported by another contractor to a landfill near Reno, Nevada.

Drivers. The Employer employs approximately 22 drivers at its Operations Yard who drive the refuse, recycle and other routes for the Employer. There is little turnover among the drivers; most have been employed for the Employer for between 8 and 16 years and one driver has been with the Employer for 29 years.

The Mechanics. The Employer employs five mechanics who work in the repair shop at the Operations Yard. Their job is to repair and maintain the Employer's equipment, including its trucks, balers, forklifts, front end loaders and conveyor belt at the Recycle Works and the McCourtney Road facility that carry recyclables that are hand-separated by the Employer's recycle processors. The mechanics visit these locations about three times each week in order to maintain and repair such equipment.

The Utility Employee. The Employer employs one utility employee, Rick Baker, at the Operations Yard. Baker spends approximately half his work time driving a forklift truck to deliver bins when other drivers are unavailable or such deliveries are missed. Baker also assembles the residential garbage carts that the Employer rents to its customers, and sometimes delivers these carts as well as the recycle carts to customers. He also cleans, welds, repairs and paints bins; repairs tires in the mechanics' shop; and performs other work as needed.

The Bin Yard. The Employer operates a bin yard about three miles from its Operations Yard facility in Grass Valley. The Employer's drivers deliver residential and commercial recyclable materials to the Employer's bin yard where it is dumped into larger containers. No employees work in the bin yard on a regular basis.

Recycle Works. The Employer operates a recycling facility referred to as the Recycle Works, located about a block (300 yards) from its Operations Yard facility. There is a buy-back site at this location where the public redeems recyclable materials. Cardboard and glass from commercial customers is also dropped off at this location. Recyclable materials from the McCourtney facility and from curbside pickup is also delivered by the Employer's drivers in debris boxes on roll-off trucks. Such materials are bailed, processed and made ready for shipment to Sacramento, California or to other points throughout the country. About 15% of the materials brought to the Recycle Works facility comes from the public's redemption of recyclable materials and about 85% comes from commercial recycling and from the Employer's trucks that deliver curbside recyclable materials to the facility.

On a daily basis, roll-off drivers transport recyclable materials from the bin yard to the Recycle Works facility. Other recyclable materials are transported to the Recycle Works facility from buy back barns and the transfer station. An average of about five to seven truckloads of recyclable materials are shipped into the facility each day. When the drivers arrive at the facility with recyclable materials for processing, one of the Employer's employees, called a recycle processor, will sometimes help the driver remove the tarp covering the truckload. The Employer utilizes two or three drivers a day to transport such recyclable materials to this facility.

Once recycled materials are sorted and bailed at the Recycle Works, glass is shipped to Sacramento by one of the Employer's regular roll-off drivers or taken by contract haulers to Oregon or to various paper mills. The Employer ships out one load of glass a day; two or three loads of aluminum a month; two or three loads of plastic bottles a month; and several loads of plastics on a daily basis. In addition, on a daily basis, the Employer ships a variety of materials (e.g., aluminum cans, two liter plastic bottles, and some paper products) to Sacramento, California.

The Employer employs four full-time employees called recycle processors at this location. In addition to redeeming recyclable materials from the public, the recycle processors operate the Employer's equipment, including the baler, the front end loader and the forklift to bale and load bales of recyclable materials onto trucks for shipment out of the facility. As discussed above, the Employer also employs a leadperson/recycle processor at this location, named Jay Stratton.

The Employer also utilizes three or four workers at this location who have been obtained through temporary employment agencies and who usually work on the processing line for curbside commingled recyclable materials, picking and sorting recyclable materials from off a conveyor belt. These temporary workers also assist in the buy back areas, accepting materials from customers, and sweeping and cleaning the facility. No party seeks to include these temporary workers in the unit.

The McCourtney Road Recycle Facility. At McCourtney Road in Grass Valley, about eight miles from its main facility, the Employer operates a recycle facility inside a county-owned waste transfer station. This facility accepts a multitude of recyclable materials that are brought to the site by the public. The material brought to the facility is put in drop boxes; bailed in small bailers; and transported either directly to the end market or to the Employer's Recycle Works facility by roll-off drivers. At the Recycle Works facility, the material is put together in a form suitable for shipment. The Employer employs four recycle processors at this location. As discussed above, one of these recycle processors is leadperson Darrell Torry.

The Raley's Location. At a Raley's grocery store in Grass Valley, about three and a half miles from the Employer's Operations Yard, the Employer operates a buy back facility in the parking lot with one attendant who redeems materials (i.e., glass, aluminum, plastic bottles) brought in by the public. Other employees of the Employer come through and clean the site and put the material in small bins.

The SPD Location. The Employer operates a facility similar to that at the Raley's store at the SPD store in Nevada City, California. The SPD facility is located about three miles from the Employer's Operations Yard. One recycle processor works at this facility.

The Washington Facility. At Washington, California, about 25 to 30 miles from its Operations Yard, the Employer operates a small facility on county-owned property. The approximately 100 residents of Washington have no curbside garbage disposal service; instead they bring their trash and recyclable materials directly to the Employer's facility where the attendant collects fees for the disposal of such materials. The Employer removes trash and recyclable materials from the facility with a truck on an on-call basis, once or twice a week, depending on the volume of business. Sorted recyclable materials are transported to the Employer's Recycle Works facility to be sorted and baled. The Employer employs one site attendant at the Washington facility who works three days a week.

Qualifications, Training and Duties of Employees. The Employer has no minimum educational requirements for drivers, mechanics or recycle processors, and most of its training is done on the job. The Employer requires its drivers and mechanics to possess a Class B drivers license. At the time of the hearing, two of the Employer's mechanics possessed a Class B drivers license and three new mechanics were being trained to acquire a Class B license. However, there is no showing that the mechanics drive trucks for the Employer. A Class B license is not required to drive the Employer's fork lift trucks or curbside recycle trucks but the Employer requires its drivers to possess such a license so that they can interchange with other drivers who are required to have a Class B license. As indicated above, Leadpersons/Recycle Processors Jay Stratton and Darrell Torry also possess Class B licenses. About four or five of the Employer's drivers possess Class A licenses and a couple of drivers possess Class C licenses. All drivers, mechanics and

recycle employees are subject to random drug testing. Drivers must undergo a physical every two years as required under DOT regulations.

Orientations & Training. Rasmussen, Elder or the Employer's safety coordinator conducts the orientation for new employees. Except for some differences in training relating to specific types of equipment used by certain types of employees, the orientations are basically the same for all new employees in all classifications.

Safety Meetings & Social Functions. Employees at all facilities attend monthly safety meetings held at each facility. These meetings are conducted by Rasmussen, Elder and by the Employer's safety coordinator. The recycle employees from the Raleys and SPD locations attend these meetings at the Recycle Works facility. The Employer also holds an annual dinner and picnic to which all employees are invited.

Temporary Transfers . As noted above, at its Recycle Works facility, the Employer employs one leadperson/recycle processor, Jay Stratton, who possesses a Class B drivers license. In the three months prior to the hearing in this case, Stratton had driven a truck about half of his work time in order to substitute for drivers that were absent. The Employer "on occasion" also uses another recycle processor, Darrell Torry, who has a Class B license, and who normally works at the McCourtney facility, to drive a roll-off truck when regular drivers are absent.

During the two or three months prior to the hearing, the Employer temporarily transferred recycle processors from the McCourtney Road facility to the Raley's and/or SPD facilities when there was a shortage of employees at those facilities. One recycle processor, Ron Fernandez, has worked at the Recycle Works, the McCourtney Road, and at the Raleys and SPD facilities. At the time of the hearing, Fernandez was working one day a week at the Recycle Works facility and four days a week at SPD.

The record reflects that there have been occasions when the Employer has temporarily transferred drivers who have been injured and are on light duty, into other jobs. Thus, in February 2000, for a week or a week and a half, the Employer employed a roll-off driver, Jeff Massaglia, in the office and then in the mechanics' shop. During this period, Massaglia assisted with paperwork, shelving and sorting parts, and sweeping floors. In April 2000, when recycle/residential collection driver Randy Matheson was injured, the Employer put him to work for a week or a week and a half in the McCourtney Road facility accepting materials from some of the recyclers and helping to maintain the facility. About 18 months prior to the hearing, it placed driver Matt Smith in the office for about two weeks. On two occasions in 1998 and 1999, when residential driver Jerry Cooper was injured, the Employer placed him on light duty in its wood waste area at its McCourtney Road facility for a total of about six weeks. On an undisclosed date, the Employer also placed residential collection driver Francis Tassone on light duty when he injured his back for about two weeks at the Recycle Works operating a bailer.

Permanent Transfers of Employees. All job openings are posted internally and employees may apply for any job within the Employer's operation at any of its locations. The Employer also hires from outside for positions that are not filled by applicants from within the Company.

The record shows that about three months prior to the hearing in this case, employee Jeff Pratt, who had previously worked at the Recycle Works as a temporary and then as a full-time recycle processor, bid on and obtained a job as a curbside recycle driver. Also about three months prior to the hearing, mechanic Chuck Schuelke bid for and obtained a recycle driver position. In 1998, employee Ted Alexander transferred from being a recycle employee at the Recycle Works facility to being a recycle driver. About five years prior to the hearing, a Recycle Works employee named Derek Wolf became a recycle driver. About five and a half years prior to the hearing, an SPD recycle processor named Guy Oakley transferred into a driver position for residential waste collection. And about five and a half years prior to the hearing, Recycle Works employee Steve Watkins transferred to become a mechanic.

Interchange of Equipment. The record shows that generally the Employer's equipment, including its bailers, forklifts and loaders, remain at a single location. However, the Employer does occasionally transfer equipment to other locations if equipment breaks down, particularly forklifts and small loaders.

Contacts Between Employees. The Employer's drivers fill out vehicle condition reports on their trucks as a part of their job duties on a daily basis. These forms are used by the mechanics to determine whether and what type of repairs need to be made on a vehicle. Depending on the type of repair involved, drivers and mechanics may discuss repair problems. After completing a repair, the mechanic fills out a repair order form that indicates that he has completed the repair and that the vehicle is in suitable condition to operate. Drivers can examine these repair forms to ensure that the needed work has been done on a truck that they are going to drive. Drivers and mechanics also have lockers in the mechanics' shop area at the Operations Yard.

Drivers have contact with recycle processors at buy-back facilities when they deliver bins; pick up bins; or clean up around facilities when garbage is left by the public at those locations at the end of the day. They also have contact with the recycle processors at the McCourtney Road and Recycle Works facilities when they deliver loads of recyclable materials to these facilities each day and when they take loads of processed recyclable materials from these facilities to the Operations Yard to be transferred to other locations. Thus, the drivers are sometimes assisted by employees at the facility who help them maneuver their trucks and remove the tarp if one is tied over the recyclable materials on the truck.

Mechanics have contact with recycle processors at the various locations three times a week when they go to the other facilities to perform regular maintenance work and repairs at

equipment at those facilities. The record also reflects that all employees attend training sessions and various Employer social functions.

Wages and Benefits. All hourly employees of the Employer are on the same four-step wage scale system under which they are reviewed every six months and they obtain a raise if their performance is satisfactory. The decision to grant a wage increase is made by Rasmussen. All employees are paid on a weekly basis on the same day of the week.

The drivers earn between \$12 and \$14 an hour. Some drivers who drive a truck with a trailer are paid \$1 more an hour. The mechanics are in three classifications. Class 1 mechanics earn between \$12 and \$14 an hour; class 2 mechanics earn between \$14 and \$16 an hour; and class 3 mechanics earn between \$16 and \$18.50 an hour. At the time of the hearing, the Employer employed one class 1 mechanic; three class 2 mechanics; and one class 3 mechanic. Recycle processors earn between \$6 and \$8 an hour. The recycle processor at the Washington facility earns \$10 to \$12 an hour because the Employer's contract with the county requires that she be paid at a rate equivalent to that of county employees. The utility worker at the main office earns between \$6 and \$8 an hour.

All of the Employer's hourly employees are eligible for the same fringe benefits package, which includes holidays, medical and life insurance and a 401(K) plan. In addition, all hourly employees are eligible to participate in the Employer's monthly bonus program. The record includes the separate bonus plans for the drivers; the mechanics; and the recycle employees. In order to receive a bonus, all employees are required to meet similar criteria which include being free of preventable accidents and injuries; free of documented disciplinary action for the month; completing all basic jobs duties which are enumerated within the plan; and not being absent or tardy during the month. The drivers and mechanics are eligible for a maximum bonus of \$60 a month and the recycle employees are eligible for a maximum bonus of \$40 a month.

Uniforms. All employees at all Employer facilities wear similar uniforms.

Lockers. Drivers and mechanics both have lockers in the shop area of the Employer's Operations Yard.

Hours of Work. The employees at the Operations Yard, Recycle Works and McCourtney Road facility punch time clocks. The hours of work of 18 of the 22 drivers employed by the Employer (i.e., all of the residential, commercial and one of the roll-off drivers) are 5:15 a.m. to between 2:30 p.m. or 3:30 p.m., or whenever the job on a particular day is completed. The drivers generally work between nine and ten hours a day. The Employer also employs a second roll-off driver, two fork-lift truck drivers and one other driver who start work 7 a.m.

The mechanics work varying schedules. One mechanic works from 7 a.m. until 4:30 p.m.; another mechanic works from 9 a.m. until 6:30 p.m.; and the other three mechanics work from 10 a.m. until 7:30 p.m.

At the McCourtney Road facility, all recycle processor employees work from 7:30 a.m. to 3:30 p.m. At the Recycle Works facility, all recycle processors work from 7:45 a.m. to 4:15 p.m. The one employee at the Washington facility works from 8 a.m. to 4 p.m., three days a week.

Analysis. As indicated above, the Petitioner seeks to represent a unit limited to the drivers who work out of the Employer's Operations Yard and the Employer contends that the only appropriate unit is one that includes all of its drivers, mechanics, utility employee and recycle processors at all of its locations.

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

With respect to unit determinations made regarding employees at single versus multi-location units, the Board has long applied the principle that a single facility is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. See Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood, 323 NLRB 665, 666 (1997); J&L Plate, Inc., 310 NLRB 429 (1993); Penn Color, Inc., 249 NLRB 1117 (1980). The presumed appropriateness of a single-location unit is rebuttable but the burden is on the party opposing the appropriateness of the single-facility unit to present sufficient evidence to overcome the presumption. J&L Plate, supra; Red Lobster, 300 NLRB 908, 910-911 (1990). To determine whether the presumption has been rebutted, the Board examines a number of

community of interest factors, including the central control over daily operations and labor relations, including the extent of local autonomy; the similarity of employee skills, functions and working conditions; the degree of employee interchange; the distance between locations; and bargaining history if any exists. See *Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood*, *supra*, 323 NLRB at 666; *J & L Plate*, *supra*, at 429; citing *Esco Corp.*, 298 NLRB 837, 839 (1990).

Geographic Separation of the Drivers From Most Other Employees. In the instant case, the Petitioner seeks to represent only the approximately 22 drivers who work out of the Employer's Operations Yard. The only other classifications of employees who work at this same facility are the mechanics and the utility employee. The other locations range from a block away to the Recycle Works facility; to three miles to the Raley's and SPD facilities; to eight miles to the McCourtney facility; to as far away as 25 to 30 miles to the Washington facility.

Wages and Fringe Benefits. The wage rates of the drivers are substantially different from those of the mechanics and utility employee who work at the same facility, as well as of the recycle processors at other locations. The fringe benefits of the drivers are the same as those of all other employees, except that the drivers are entitled to a larger monthly bonus than all other employees except the mechanics.

Schedules. The drivers work schedules that differ substantially from those of all other employees.

Supervision. The record establishes that with the exception of Supervisor Ron Cornell at the Operations Yard, who directly supervises one fork lift truck driver and the utility employee, employees at all of the Employer's locations have common supervision by stipulated supervisors Rasmussen and Elder. Rasmussen and Elder control hiring and firing decisions and decisions relating to pay rates and other terms and conditions of employment for all employees.

Permanent Interchange. I do not find that the evidence of permanent interchange is significant in this case. Thus, the record shows that three months prior to the hearing in this case, one recycle processor (out of a total of approximately 13 recycle processors) transferred to become a recycle driver and one mechanic (out of approximately five mechanics) transferred to become a recycle driver. There is no other evidence of permanent interchange that is less than two years old. Thus, as described above, two years prior to the hearing, one recycle processor became a recycle driver. About five to five and a half years prior to the hearing, a recycle processor became a recycle driver; a recycle processor became a refuse driver; and a recycle processor became a mechanic. There is no evidence that a driver has permanently transferred to become a mechanic or a recycle processor.

Temporary Interchange. As to temporary interchange, the record reflects that the utility employee at the Operations Yard spends half of his work time driving a fork lift truck; one

leadperson/recycle processor (Jay Stratton) possesses a Class B License and has driven a truck substituting for drivers about half of his work time during the three months preceding the hearing; and another leadperson/recycle processor (Darrell Torry) who also possesses a Class B license, has “on occasion,” been used to drive a roll-off truck for the Employer when regular drivers are absent. There is no evidence that the mechanics, who work at the same location as the drivers, are used to drive trucks for the Employer.

The record further discloses that when drivers are injured and placed on light duty, they have been assigned for a short periods (usually one or two weeks) to the Employer’s office; to its mechanics’ shop doing paperwork or cleaning up; and to its recycle facilities doing light recycle processing and/or maintenance work. The record further discloses some instances where recycle processors have been transferred from one Employer facility to another to substitute for absent recycle processors. There is no evidence of drivers doing mechanical work or of mechanics doing driving work.

The Qualifications, Skills, Training and Job Duties of Employees. The record shows that there is no minimal educational requirement for any of the Employer’s employees. The Employer requires its drivers to have or to be able to obtain a valid Class B drivers license. According to Rasmussen, the Employer also requires its mechanics to have a Class B license, and at the time of the hearing, two of the mechanics had such licenses. However, as indicated above, there is no showing that the mechanics drive trucks for the Employer. The record does not indicate whether the Employer requires its utility person to possess a valid Class B drivers license. However, the record does indicate that the utility person spends approximately half his work time driving a fork lift truck, the same type of work that is performed by another employee whom the Petitioner seeks to include in the unit. As indicated above, the utility person works at the same location as the drivers.

The work of the drivers differs from that of the Employer's other employees. Thus, the drivers are required to perform the refuse and recycle driving work for the Employer; the mechanics perform the major and minor repair and maintenance work on the Employer’s vehicles and equipment; and the recycle processors work at redeeming, sorting and bailing recyclable materials. Except for the two leadperson/recycle processors discussed herein, there is no evidence that the other recycle processors employed by the Employer drive trucks for the Employer or that any recycle processors perform repair and maintenance work for the Employer. Nor is there any evidence that any of the recycle processors perform work at the Operations Yard where the drivers, mechanics and utility person work.

Based on the foregoing, I find that the Employer has failed to rebut the presumption in favor of a single facility unit and that the petitioned-for unit is an appropriate unit with the addition of two dual function employees, (i.e., the utility person employed at the Operations Yard and Leadperson/Recycle Processor Jay Stratton, who is discussed below). In so finding, I note that the drivers are employed only at the Employer’s Operations Yard. Their geographic separation, skills, job duties, wage rates and work hours are sufficiently different from those

of the recycle processing employees to support a finding that they constitute a separate appropriate unit.

Although almost all of the drivers (except for the fork lift truck driver and utility person at the Operations Yard who are immediately supervised by Cornell) share common supervision with the recycle processors at other Employer locations, the Board has found that the presence of shared supervision is but one factor to be considered, and is not necessarily determinative of unit determinations. See *Mc-Mor-Han Trucking Co.*, 166 NLRB 700, 701 (1967).

I further find that the evidence of temporary interchange between the drivers and other employees (except with regard to the utility employee whom I have decided is appropriately included in the unit), is insufficient to require the inclusion of any other classification of employees in the unit with the drivers. Thus, the fact that there have been several instances where drivers have been briefly placed in other jobs when they were injured and on light duty does not constitute significant temporary interchange. Nor does the fact that one out of approximately thirteen recycle processors, who is also a leadperson with a Class B drivers license, has performed driving work on a regular basis, sufficient to support the conclusion that all recycle processors at all Employer locations should be included in the unit with the drivers. Similarly, I find that the minimal evidence of recycle processors and mechanics who have become drivers does not warrant a finding that these groups should be included in the unit of drivers. Thus, most of the examples of such permanent interchange occurred more than two years before the hearing in this case and is thus of little significance for purposes of making the instant unit determination. Further, there is no evidence of drivers who became mechanics or recycle processors. Moreover, the Board has long regarded permanent transfers to be a less significant indication of actual interchange than temporary transfers. See *Red Lobster*, 300 NLRB 908, 910 (1990).

With regard to the mechanics, who work at the same facility as the drivers, while the Employer may also require them to possess a Class B driver's license, there is no evidence that the Employer requires them to drive as a part of their job duties or that drivers are expected to perform mechanical work for the Employer as a part of their jobs. While the record does not disclose what, if any, certifications are possessed by the Employer's mechanics, it is apparent from the record that they must be highly skilled employees given that they perform all repairs and maintenance work on the Employer's trucks and other equipment. See *Novato Disposal Services, Inc.*, 330 NLRB No. 97 (February 10, 2000); *Overnite Transportation Co.*, 322 NLRB 347, 349-350 (1996), reconsideration denied, 322 NLRB 723 (1996) (finding that it is "all but self-evident that mechanics must have specialized skills" based on their performance of major and minor mechanical repairs.) In sum, while the drivers and mechanics work at the same location; share common overall supervision; and have regular contact with each other, given their different skills; functions; schedules; and pay rates, I do not find that the mechanics must be included in the petitioned-for unit of drivers in order for it to be an appropriate unit.

I do not find that the certification in Case 20-RC-17354 warrants a different conclusion since the unit in that case resulted from a stipulation by the parties and not from a decision by the undersigned based on the facts adduced at a hearing regarding the relevant community of interest factors.

The Utility Employee. The record shows that there is one utility employee, Rick Baker, who spends approximately half of his work time driving a fork lift truck to deliver bins when other drivers are unavailable or when such deliveries have been missed. Baker spends the remainder of his time assembling garbage carts for rental to customers; cleaning, repairing and painting bins; repairing tires in the Employer's mechanics' shop; and performing other work as needed. Baker is supervised by Supervisor Ron Cornell who also supervises another fork lift driver included in the unit. Baker works at the same location as the drivers. He earns between \$6 and \$8 an hour.

Based on such facts, I find that Baker is a dual function employee, which is defined by the Board as an employee who performs more than one function for the same employer. Such employees may vote in an election if they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in working conditions in the unit. See *Martin Enterprises, Inc.*, 325 NLRB No. 133 at p. 2 (April 30, 1998) and cases cited therein. See also *Oxford Chemicals, Inc.*, 286 NLRB 187 (1987); *Fleming Industries, Inc.*, 282 NLRB 1030 fn. 1 (1987); and *Berea Publishing Co.*, 140 NLRB 516 (1963). In applying this test, the Board has no "bright line" rule as to the amount of time required to be spent in performing unit work. *Id.* Rather, the Board examines the facts in each case. *Id.* As the Board found in *Martin Enterprises, supra*, however, if unit work comprises less than 10% of the employee's work time, the employee will not be included in the unit. In *Oxford Chemicals*, 286 NLRB 187 (1987), the Board found that if unit work comprised 25% of an employee's work time on a regular basis, he would be included in the unit. As Baker spends approximately 50% of his work time performing unit work on a regular basis, I find that he is a dual function employee who performs unit work for a sufficient period of time to warrant his inclusion in the unit.

Jay Stratton and Darrell Torry. In addition, the record shows that leadperson/recycle processors, Jay Stratton and Darrell Torry, possess Class B drivers licenses and have driven trucks for the Employer to fill in for absent drivers. The record discloses that Stratton had been driving about half of his work time during the three months preceding the hearing but discloses that Torry does so only "on occasion." As Stratton appears to drive for the Employer for about half of his work time, he will be included in the unit as a dual function employee. However, because it appears from the record that Torry drives only occasionally for the Employer, the record does not support that he is a dual function employee and he will be excluded from the unit.

In sum, I find that the drivers at the Operations Yard constitute an appropriate unit based on their shared and unique job skills, type of work performed; hours; wages; geographic separation from most other employees; and lack of significant interchange with employees in

other classifications. With the foregoing modifications, (i.e., the inclusion of the utility employee and of Jay Stratton in the unit), I find that the petitioned-for unit is an appropriate unit for collective bargaining purposes.

The cases relied on by the Employer in support of its contention that an overall unit is the only appropriate unit are distinguishable from the instant case. Thus, in contrast to the instant case, in both R&D Trucking, Inc., 327 NLRB No. 103 (January 29, 1999), and Novato Disposal Services, Inc., 328 NLRB No. 118 (June 29, 1999), and 330 NLRB No. 97 (February 2000), there were drivers employed at multiple employer locations. Indeed, only drivers employed at multiple employer locations were at issue in R&D Trucking, Inc., where the Board found that the single facility presumption had been rebutted by the employer and that a unit comprised of drivers at two employer facilities constituted an appropriate unit. Thus, in R&D Trucking, Inc., there was no issue presented as to whether employees at other locations in other job classifications should be included in the unit.

While in Novato Disposal Services, an issue existed as to the inclusion of other classifications of employees (i.e., buy back attendants, loader operators, recycling center laborers, and floor operators), in addition to drivers working at multiple locations, the record therein showed support for the inclusion of such groups in an overall unit. Thus, in Novato Disposal Services, unlike the instant case, there was a significant degree of contact and interchange between employees in the various classifications and the drivers; similar pay rates; and common seniority, in addition to common overall supervision. I have not found such evidence in the instant case. Further, it is notable that the Board in Novato, 330 NLRB No. 97, found, as I have in the instant case, that the mechanics and mechanics helpers should be excluded from the unit because of their differing skills and the nature of their work and their different pay rates.

Accordingly, I hereby direct an election in the petitioned-for unit, as modified herein.

- 7/ Pursuant to the parties' stipulation, I find that District Manager Art Rasmussen and Operations Manager Bob Elder should be excluded from the unit as statutory supervisors. As discussed above, Ron Cornell is also excluded from the unit as a statutory supervisor based on his authority to change the schedules of the fork lift truck driver and the utility employee and to authorize them to work overtime.

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