

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

WASTE MANAGEMENT OF MARYLAND, INC.,
A DIVISION OF WASTE MANAGEMENT, INC.^{1/}

Employer/Petitioner

and

MARYLAND PUBLIC EMPLOYEES, COUNCIL 67,
A/W THE AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES AND
LOCAL 1104 OF THE AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES^{2/}

Union

Case 5-RM-991

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.

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.^{3/}
3. The labor organizations involved claim to represent certain employees of the Employer.^{4/}
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) (7) of the Act for the following reasons:^{5/}

SEE ATTACHED

ORDER

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

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, D.C. 20570. This request must be received by the Board in Washington by **September 20, 2000**.

Dated September 6, 2000

at Baltimore, Maryland

/s/ ALBERT W. PALEWICZ
Acting Regional Director, Region 5



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

2/ The Union's name appears as amended at the hearing.

3/ Waste Management of Maryland, Inc., a Division of Waste Management, Inc. (herein the Employer or the Company) with an office in Gaithersburg, MD, is engaged in the business of hauling commercial and residential solid waste and recycling materials in Montgomery and Frederick Counties, Maryland.

4/ The parties stipulated that Maryland Public Employees Council 67 a/w the American Federation of State, County, and Municipal Employees and Local 1104 of the American Federation of State, County, and Municipal Employees (herein collectively called the Union) are labor organizations within the meaning of Section 2(5) of the Act.

5/ The Employer filed a petition seeking an election in the following unit:

All residential and commercial drivers and helpers employed by the Employer at its Gaithersburg and Frederick, MD facilities but excluding all office clerical employees, professional employees, all other employees, and guards and supervisors as defined by the Act.

There are approximately 211 employees in this proposed unit.

The parties stipulated at the hearing that the following employee classifications are excluded from any unit found appropriate by the Regional Director: all dispatchers, Safety Director, Maintenance Manager, mechanics, tire man, cleaning and truck wash employees, welders, CFA clerk, delivery employees, Sales Supervisor, Outside Sales Representatives, Sales Coordinator, and Quality Assurance Coordinator.

The parties stipulated that the following individuals employed by the Employer are supervisors within the meaning of Section 2(11) of the Act and are excluded from the bargaining unit: Operations Managers Denny Holt, Hugo Morales, Ron Hannan, Walter Shoe; Frederick, MD Site Manager Fred Stutz; and Route Supervisors Mike Spriggs, Jorge Hondoy, Salvador Delgado, Terry Freeman, Glen Payne, Claybourne Marshall, Bill Smith, Jeff Cameron, Ernie Andrews, Jay Tolbert, and Oscar Henriquez.

There is currently in existence a collective bargaining agreement between the Union and the Employer, effective by its terms from November 17, 1996 through November 16, 2000, for the following unit as described in the collective bargaining agreement:

[A]ll drivers and helpers employed at the Company's Gaithersburg, Maryland facility located at 8101 Beechcraft Avenue, actively engaged in the collection of commercial and household trash, excluding container delivery drivers, facility, vehicle and container maintenance employees, all

office clerical employees, professional employees, all other employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

There are approximately 70 employees in the above unit.

ISSUES

- Whether there is a question concerning representation of the Employer's drivers and helpers so as to warrant processing of the Employer's RM petition.
- Whether all drivers and helpers employed at the Employer's Gaithersburg, MD facility should be included in the same unit as all drivers and helpers employed at the Employer's Frederick, MD facility.
- Whether all commercial and private residential drivers and helpers employed at the Employer's Gaithersburg, MD facility should be included in the same unit with all municipal residential drivers and helpers employed at the Employer's Gaithersburg, MD facility.
- Whether Sean Knott and Teddy Cranford are supervisors within the meaning of Section 2(11) of the Act.

Question Concerning Representation

The Union contends that there is no question concerning representation, and contends that the Employer's petition should be dismissed, citing, *inter alia*, Windee's Metal Industries, 309 NLRB 1074 (1992). The Union argues that the unit sought by the Employer is contrary to the collective bargaining history of the parties and that the Union has made no demand for recognition of employees other than those listed in the collective bargaining agreement. The Union argues that its letter of October 8, 1999, to the Employer does not constitute a demand for recognition as there was no further action taken on a grievance contained in the letter. Thus, there is no present demand for recognition and no basis for the processing of the RM petition.

The Employer contends that after a corporate merger between two companies, U.S.A. Waste Services, Inc. and Waste Management of Maryland, Inc., and a subsequent consolidation of various operations, there has been a significant influx of new employees into the 8101 Beechcraft Avenue location in a number that is greater than the number of unionized employees located in the same facility. The Employer contends that as a result of the subsequent consolidation it has a good faith belief that the Union does not maintain majority status at the Gaithersburg, MD facility, citing, *inter alia*, George V. Hamilton, 289 NLRB 1335 (1988).

Furthermore, the Employer argues that a grievance from the Union in a letter dated October 8, 1999, constitutes a demand for recognition in a larger unit and argues that the Union's subsequent requests for information concerning employees at the Gaithersburg, MD facility are consistent with, and evidence of, the Union's demand for recognition in a larger unit.

FACTS

Bargaining History

The Union has represented drivers and helpers performing municipal residential trash hauling and recycling services, working for successive employers, all under contract to Montgomery County, MD, since at least 1972. In 1996, these municipal drivers and helpers were working for USA Waste Services of Maryland at USA Waste's 8101 Beechcraft Avenue facility in Gaithersburg, MD, when the current collective bargaining between USA Waste Services of Maryland and the Union took effect. The unit as described in the collective bargaining agreement, effective by its terms from November 17, 1996 through November 16, 2000, is as follows:

[A]ll drivers and helpers employed at the Company's Gaithersburg, Maryland facility located at 8101 Beechcraft Avenue, actively engaged in the collection of commercial and household trash, excluding container delivery drivers, facility, vehicle and container maintenance employees, all office clerical employees, professional employees, all other employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

On July 17, 1998, U.S.A. Waste, Inc. merged with Waste Management, Incorporated on a nationwide basis. Waste Management of Maryland, Inc. had for years operated a facility at 7870 Beechcraft Avenue, located just down the street from USA Waste's 8101 Beechcraft Avenue facility. From about July 1998 to September 1999, the merged companies, now known as Waste Management of Maryland, Inc., maintained and operated two separate facilities on Beechcraft Avenue in Gaithersburg, MD.

Essentially the Employer provides three services: 1) the municipal residential and recycling service provided under contract to Montgomery County, MD; 2) a private residential and recycling service provided to homeowners and businesses in Montgomery County, MD; and 3) a commercial/industrial solid waste service. Currently, as explained below, those drivers and helpers performing work under the municipal residential and recycling service are the only employees who are in the unit contained in the above-referenced collective bargaining agreement. After the merger, the Employer continued to recognize the Union as the collective bargaining representative of the drivers and helpers doing the municipal residential and recycling work.

At the time of the merger, the Employer's 8101 Beechcraft Avenue facility housed the overwhelming majority of its municipal residential routes, approximately 52 at the time, and housed also several private residential and commercial routes. In all, there were

about 78 employees working at the 8101 Beechcraft Avenue facility, all represented by the Union.

The Employer, by letter dated August 4, 1998, announced to the Union its intent to transfer several routes between the two Beechcraft Avenue facilities, and requested bargaining with the Union about the effects the relocation would have on its employees. The Employer sent another letter to the Union, dated August 21, 1998, outlining its plans to effectuate the transfer of routes. The Employer's plan was to "move all the private sector routes out of 8101 over to 7870 and all the municipal services from 7870 to 8101." The letter also informed the Union that the Employer believes that the transfer of the routes "preserves the integrity of the current bargaining unit without impacting overall driver employment between the two operating locations."

In September 1998, the Employer transferred all remaining municipal residential routes (Area 7) out of its 7870 Beechcraft Avenue facility and moved them into its 8101 Beechcraft Avenue facility. Approximately 10 to 15 drivers and helpers were transferred into the represented unit. Consequently, all the municipal work was then located at 8101 Beechcraft Avenue and no municipal residential routes were located at 7870 Beechcraft Avenue.

Similarly, all the commercial and private residential routes at the Employer's 8101 Beechcraft Avenue facility were transferred to the Employer's 7870 Beechcraft Avenue facility. Consequently, all the private residential and the commercial work was then located at 7870 Beechcraft Avenue. Upon completion of these transfers, there were approximately 58 drivers and helpers at the 8101 Beechcraft Avenue facility and approximately 112 drivers and helpers at the 7870 Beechcraft Avenue facility.

By agreement of the parties, in September 1998, the approximately 25 to 30 employees transferred at that time from the 8101 Beechcraft Avenue facility to the 7870 Beechcraft Avenue facility were transferred out of the represented unit and were no longer represented by the Union. As a result of bargaining between the parties, however, employees transferred out of the represented unit at the Employer's 8101 Beechcraft Avenue facility were given a 120-day window in which they could return to their former positions if they so chose. None of these employees chose to return to their former positions.

Closure of the 7870 Beechcraft Avenue Facility

In August 1999, the Employer decided to close and sell the 7870 Beechcraft Avenue facility and to move the commercial and private residential operations into the 8101 Beechcraft Avenue facility. By letter dated August 16, 1999, the Employer notified the Union of its decision to consolidate the two Beechcraft Avenue facilities. The letter notified the Union that the consolidation would take effect no later than September 15, 1999.

Additionally, the same letter informed the Union that the Company would no longer recognize the Union as the bargaining representative for its employees. The Company

added in the letter that it "is apparent that the union will no longer represent a majority of its employees as the merger will result in a unit of approximately 182 employees, of which approximately 57 employees are represented by the Union." On August 18, 1999, the Company sent the Union another letter, asking that the Union disregard the August 16, 1999 letter and informing the Union that the Company intended to continue honoring the existing collective bargaining agreement. Company and Union officials subsequently met at various times in August and September 1999 to discuss the effects of the closure of the 7870 Beechcraft Avenue facility.

Around the same time, the Union began an organizing drive among employees located at 8101 Beechcraft Avenue by circulating flyers announcing a lunch-time meeting for employees at the Employer's facility. Additionally, Phyllis Dixon, an AFSCME Council 67 Representative, sent a hand-written note to the Company on September 21, 1999, requesting the names of each employee working at 8101 Beechcraft Avenue, including employees in the Union -represented unit and those not represented by the Union. Elliott Hanin, the Employer's Division President overseeing the Gaithersburg and Frederick, MD facilities, responded thereafter with his own letter to Dixon, asking her to let him know what information she was seeking.

By letter dated September 29, 1999, Company counsel informed the Union that, as a result of the negotiations that took place in August and September 1999, the Company "will continue to recognize AFSCME Local 1104 as the representative of bargaining unit employees servicing the Montgomery County, Maryland residential contract. Accordingly, Waste Management will continue to honor our collective bargaining agreement governing those employees. However, the remaining Gaithersburg-based operations, which involve employees not currently part of the AFSCME bargaining unit, will continue to operate on a non-union basis unless and until a union is recognized as their exclusive bargaining representative under the National Labor Relations Act."

October 8, 1999 letter

By letter dated October 8, 1999, Archer Blackwell, AFSCME Council 67 Representative, sent a letter to Denny Holt, the Company's Operations Manager for the municipal residential services provided to Montgomery County (the manager in charge of the represented unit), stating that it is the Union's belief, that all employees (except those specifically excluded in the contract's unit description) should be in the Union. The letter states that a grievance under the recognition and grievance clauses of the collective bargaining agreement was enclosed and asked the Company to respond as soon as possible so that, absent resolution, the grievance could be appealed to the next step.

According to the record testimony, there was, however, no grievance attached to the letter. The grievance was subsequently neither processed further nor withdrawn. The Union's Representative Archer Blackwell called the Company's Operations Manager Denny Holt about two weeks later and inquired about the status of the grievance and the Company's position. Hanin testified that Employer counsel sent a letter to the Union on October 18, 1999, reaffirming its recognition of the Union as the representative of the

drivers and helpers doing the municipal work. The letter also informed the Union that, absent withdrawal of the October 8, 1999 grievance, the Employer viewed the Union's demand as creating a question concerning representation.

Another Union meeting was held on December 14, 1999. Flyers announcing the meeting stated that the Union has almost 50% of the cards signed up and invited employees to "find out what's next in this campaign election." Another Union meeting was held on Thursday, March 16, 2000. The same day, Glenard S. Middleton, Sr., AFSCME Executive Director, sent a letter to Elliott Hanin requesting, *inter alia*, personal information about all current workers in the bargaining unit and requested the same information for those workers that have similar job titles. The Company denied the request for the information concerning workers not represented by AFSCME. By letter dated April 13, 2000, Mr. Middleton reiterated his request for the same information. The same day, Phyllis Dixon, Local 1104 Representative, left a handwritten note at the Employer's facility, requesting a meeting between the Company and the Union. Elliott Hanin sent a responding letter to Dixon on April 18, 2000, asking Dixon to provide available dates for the requested meeting. Hanin received no response.

The Employer filed the instant petition on July 6, 2000. There are currently about 70 drivers and helpers represented by the Union at the Gaithersburg facility. There are approximately 114 drivers and helpers working at the Gaithersburg facility who are not represented by the Union. The unrepresented drivers and helpers perform the private residential and commercial work. There are about 27 drivers and helpers at the Employer's 4622 Wedgewood Road, Frederick, Maryland facility, none of them currently represented by any Union.

CONCLUSION

The Employer contends that upon the merger and the subsequent consolidation of its two Gaithersburg, MD facilities, the number of employees not represented by the Union in the consolidated facility became greater than the number of unionized employees located in the same facility. The Employer contends that it now has a good faith belief that the Union does not maintain majority status at the Gaithersburg, MD facility, citing, *inter alia*, George V. Hamilton, 289 NLRB 1335 (1988). Furthermore, the Employer argues that the Union made a demand for recognition in a larger unit on October 8, 1999, and that the Union's subsequent requests for information and its organizing activities are consistent with the Union's demand for recognition in a larger unit.

The Union contends that there is no question concerning representation; that the unit demanded by the Employer is contrary to the collective bargaining history of the parties; that the Union has made no demand for recognition in a larger unit and contends that the Employer's petition should be dismissed, citing, *inter alia*, Windee's Metal Industries, 309 NLRB No. 171 (1992). The Union argues that there was no further action taken on a grievance contained in its October 8, 1999 letter to the Employer. Thus, there is no present demand for recognition and no basis for the processing of the RM petition.

I find that the bargaining unit composed of all municipal residential drivers at the Employer's 8101 Beechcraft Avenue facility, currently represented by the Union, remains an appropriate unit.

I make this finding based upon the parties' bargaining history, the language contained in the current collective bargaining agreement, and the retention of the bargaining unit's separate identity, notwithstanding the merger and consolidation. The unit retained its separate identity as a result of the Employer's segregation of its three operations and the identifiable job responsibilities for employees in each of the Employer's three respective operations.

In this case, it is clear that the parties' bargaining history and the Employer's fine-tuning of its operations outweigh any other relevant considerations in determining the appropriate unit. Evidence presented by the Employer demonstrated certain common administrative functions, common supervision by Elliott Hanin, and the interchange of drivers, especially between the municipal and private residential operations at its Gaithersburg, MD facility. Furthermore, evidence presented by the Employer demonstrated that the Union, on October 8, 1999, believed that "all employees should be in the Union." Finally, evidence presented by the Employer demonstrated the Union's organizing attempts among employees not currently represented by the Union at the Gaithersburg, MD facility.

However, the Union has represented employees doing the municipal work, working for various employers, since 1972. The collective bargaining agreement, currently in effect, covers drivers and helpers employed at the 8101 Beechcraft Avenue facility, actively engaged in the collection of household and commercial trash. Thus, in November 1996, when the current agreement took effect, the Employer clearly intended to include only drivers and helpers at the 8101 Beechcraft Avenue facility. It is clear, pursuant to the collective bargaining agreement in effect, particularly as clarified by the agreements between the parties in September 1998 and September 1999, that the municipal residential drivers remain covered by such agreement, thereby identifying the municipal residential drivers as the appropriate unit in this matter.

In August 1998, the Employer then transferred the private residential and commercial operations out of the 8101 Beechcraft Avenue facility. The Employer thereby separated the municipal residential drivers and helpers from all other drivers. The Employer's plan was to move these various operations, while "preserving the integrity of the bargaining unit" as expressed in its August 21, 1998 letter to the Union. Thus, from that point in time, the Employer recognized the Union as the representative of the municipal residential drivers and helpers only, and the Union concurred.

The Employer consolidated the two Beechcraft Avenue facilities a year later but expressly continued to recognize the Union as the representative of the municipal residential drivers and helpers only. Although there might have been arguable ambiguity about the representational status of the employees represented by the Union, Employer counsel's letter of September 29, 1999 expressly states the continuing recognition of the Union as the representative of the municipal residential drivers and helpers only. Furthermore, the letter clearly identifies those employees not working on

the municipal residential services as "not currently part of the AFSCME bargaining unit" whose job operations "will continue to operate on a non-union basis." Thus, it is clear that the Employer, according to its own plan and upon its own initiative, segregated the operations and the employees and reaffirmed its recognition of the Union as the representative of the municipal residential drivers and helpers only.

Furthermore, the Union has made no demand for recognition in a larger unit. The Union, despite allowing the Employer to originally separate and then consolidate all drivers and helpers, has consistently asserted itself only as the representative of the municipal residential drivers and helpers. Assuming arguendo that the Union believed that all drivers and helpers should be represented by the Union as evinced by its October 8, 1999 letter to the Employer, the Union nevertheless took no further action on the grievance supposedly attached to the letter. Moreover, notwithstanding the Union's failure to call a union officer to state the Union's position on the unit at the hearing, Union counsel stated clearly the Union's position. Union counsel stated at the hearing unequivocally that "there is currently in effect a collective bargaining agreement" between the Employer and the Union and that "it can be stipulated that there is a history of collective bargaining with regard to a certain unit or units at differing work locations." The Union stands firm in its assertion that the unit of municipal residential drivers is the appropriate unit as demonstrated by the history of collective bargaining, and the language of the current collective bargaining agreement. Regarding the Union's attempt to organize the unrepresented drivers and helpers at the Gaithersburg, MD facility, it is clear that if the Union wants to represent these employees, it can do so only through the election process.

The Employer contends, however, that notwithstanding such bargaining history, the influx of the employees from 7870 Beechcraft Avenue and the interchange of these employees with the municipal drivers and helpers, combined with the Union's demand for recognition in a larger unit, create a question concerning representation of its employees. The Employer cites George V. Hamilton, supra, and Boston Gas Co., 221 NLRB 628 (1975), for the proposition that merger of employees in a single location creates a question concerning representation.

In George V. Hamilton, however, the critical issue was whether the consolidation of a two-employee group constituted an accretion to a two-employee represented unit where there was no substantial change in the overall operations. In the instant case, the Union is not seeking to accrete the unrepresented drivers and helpers into the represented unit. Furthermore, in George V. Hamilton, the relocated employees worked together and interchangeably with employees of the established unit.

In this case, while there is evidence of temporary transfers between the municipal and private residential operations, especially on Saturdays, it is clear that municipal residential and the private residential drivers have identifiably distinct positions. Drivers were clearly identified throughout the hearing according to their job positions, i.e. as municipal residential, private residential, or commercial drivers. Furthermore, there is no evidence that the Employer has at any time combined the private residential drivers who came from the 7870 Beechcraft Avenue facility with the municipal residential drivers at the 8101 Beechcraft Avenue facility. Rather, the private residential

and municipal residential retained their distinct job classifications and are interchanged only temporarily. Thus, municipal residential drivers have the primary responsibility of driving the municipal routes while private residential drivers have the primary responsibility of driving the private residential routes after these routes were consolidated into the 8101 Beechcraft facility. Additionally, Boston Gas Co., is inapposite as it involves competing demands for the same employees by two different labor organizations.

This case is strikingly similar to Fisher Broadcasting, Inc. 324 NLRB 256 (1997), where the employer consolidated the operations of its three radio stations. The employees of one of the radio stations, which had 10-15 employees, were represented by a Union (AFTRA) while the 20-25 employees of the other two radio stations were not represented. The Board affirmed the finding that the unit represented by the Union retained their identity as an appropriate unit, notwithstanding the consolidation of the 3 stations. The Board noted that a party needs "compelling circumstances" to overcome the significance of bargaining history and that a long bargaining history, standing alone, suggests the appropriateness of a separate bargaining unit. *Ibid* at 262-263.

Furthermore, in Fisher Broadcasting, notwithstanding the centralization of administrative functions; common business manager, sales manager, common Human Resources manager; same physical facility: common lunchroom and production facilities; uniform personnel forms for vacations, transfers, terminations; shared engineering staff and promotional department; and identical holidays, health insurance plans, and pension plans, a separate identity for the represented unit was retained.

The separate identity in Fisher Broadcasting was established by a bargaining history of nearly 50 years; the Employer's continuing operation at its original location, with three separate radio stations, each station having its own program director, who had no authority to supervise personnel of the other stations. Additionally, the terms and conditions in collective bargaining agreement applied only to represented unit, and the employees of the respective stations could be identified by separate station apparel, jackets, etc. Finally, certain personnel of one station were not qualified to work on certain other stations, there was no interchange of on-air personnel and there was only brief daily contact among employees as most employee time spent in respective areas and not with employees of other stations.

In this case, notwithstanding the centralization of administrative functions; common manager Hanin, same physical facility at 8101 Beechcraft Avenue including common break/dispatch room, common parking & vehicle repair facilities and uniform personnel forms, the separate identity for the represented unit is retained. This separate identity is established by: a bargaining history of nearly 28 years; the Employer's continued operation of the municipal services as a separate entity at its original location; and the separate operation of its three separate services (municipal, residential, private residential and commercial). Additionally, each service has its own Operations Manager, who has no authority to supervise personnel of the other services and there are separate dispatchers for each service. The separate identity is furthered bolstered by the fact that the terms and conditions in the collective bargaining agreement apply only to represented unit (such as Martin Luther King holiday, Defined Contribution

retirement plan) and by the fact that drivers and helpers can be identified by apparel-- the represented drivers wear dark green, while other drivers wear light green. Furthermore, certain personnel of one service are not qualified to work on certain other services. For example, the residential drivers are not qualified to drive the commercial roll-off vehicles. Finally, there is limited interchange of personnel and only brief daily contact in the break room, and drivers spend the majority of their working time on their respective routes and not with drivers of the other services.

Because I have found that there is no question concerning representation, I am dismissing the Petition. Therefore, it is unnecessary for me to resolve the remaining issues.

308-8050