

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

MURREY'S DISPOSAL, AMERICAN DISPOSAL,
DM DISPOSAL, AMERICAN PORTABLE
STORAGE, AND DM RECYCLING¹

Joint Employer

and

Case 19-RC-14265

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 599

Petitioner

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, 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. The labor organization involved claims to represent certain employees of the Employer.
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. 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:²

All full-time and regular part-time drivers, including curbside recycle drivers, yard waste drivers, relief recycle drivers, roll off drivers, tractor-trailer drivers, commercial recycle drivers, welders, fabricators, mechanics (including class C mechanics (service techs)), yard workers, transfer station operators, laborers, fuelers, maintenance workers, dispatchers, painters, painter helpers,

¹ The Employers names and relationship is in accord with the party's stipulation.

² The Unit is in substantial accord with the stipulation of the parties, as modified by this decision.

recycle dispatchers, hook lift drivers, roll-off recycle drivers, container delivery drivers, Lakewood welder/fabricator, recycling attendants, equipment delivery drivers and scrap haulers employed by Murrey's Disposal, American Disposal, DM Disposal, American Portable Storage and DM Recycling; but excluding all employees of Tacoma Recycle, employees currently represented by another labor organization, confidential employees, clerical employees, administrative employees, guards and supervisors as defined by the Act.

FACTS

I. Preliminary Matters

1. Administrative Setup

Waste Connections, Inc. owns the five relevant enterprises. Murrey's Disposal, American Disposal and DM Disposal collect and transport refuse, recyclables and yard waste from Pierce County residences and commercial businesses. The garbage facility ("Garbage Yard") is located at 4622 70th Avenue in Fife, Washington. The recycling facility ("Recycle Yard") is located across the street at 4621 70th Avenue East. American Portable Storage ("APS") is located at 6607 North Levee Road in Fife. APS apparently sells/rents/leases storage containers or boxes, which drivers deliver to customers. DM Recycling ("DMR") is located in the same yard as APS ("APS/DMR yard") and provides recycling and construction debris hauling via large containers. The APS/DMR yard is located approximately one mile from the recycling and garbage yards. There is also a small fabrication shop in Lakewood about 15 miles from Fife. The parties stipulated that the above-named business entities are joint employers.

Matthew O'Connell is the Employer's Operations Manager, and handles the daily operations for Murrey's, American Disposal, American Portable Storage and DM Recycle. He is responsible for both the Employer's garbage and curbside recycling operations. He directly supervises many of the employees, including curbside recycle drivers, yard waste drivers, recycling attendant, hook lift drivers, equipment delivery drivers and the Simon & Sons drivers. O'Connell reports to Dwight Herring, the District Manager. Herring oversees all operations for the district. Herring reports to Edward Westmoreland, the divisional Vice-President of Waste Connections for northern Washington. Westmoreland reports to Eric Morrill, the Regional Vice-President.

In general, the garbage drivers collect garbage and return with it to the Garbage Yard. Employees not involved herein³ further process and haul away the garbage. The recycling drivers collect recycled materials and deliver them to the Recycle Yard. Yard waste is hauled to a transfer station not itself involved in this preceding.

The Employer's maintenance operations are located at the Garbage Yard. The maintenance operations include a general maintenance shop, which employs mechanics, maintenance workers (who are called greasers, service shop attendants or service techs), painters, and welder/fabricators. There is a day and a swing shift. The day shift runs from 6:00 a.m. to 2:30 p.m. and the eight-hour swing shift begins at 2:00 p.m. The maintenance employees wear maintenance uniforms, punch in and out in the shop and report to Maintenance Manager Greg Barnett, at the Garbage Yard.

³ Apparently part of the Local 313 unit, discussed infra.

The mechanics in the maintenance operations perform service and general repairs on the garbage fleet and rolling stock from the recycle and APS/DMR yard as well as on truck trailers. The class C mechanics (the service techs and greasers) change oil and grease moving parts. The welders/welder fabricators work on rolling stock and containers. Fuelers are responsible for fueling the rolling stock. They keep a fuel log sheet and also report to Barnett. Yard laborers jockey the trucks in the yard, moving them into required positions. They also handle other tasks, such as washing containers and general cleaning. Occasionally, they go into the field to clean a spill. The painter and painter helper prepare and paint containers and garbage, recycle and storage boxes. There are two dispatchers: one at the recycle yard and the other at the APS/DMR facility. Both drive trucks as well.

At present, Local 313 represents the garbage drivers. Approximately 40 drivers are covered by Local 313's contract. The represented garbage drivers pick up garbage from Pierce County residential and commercial customers.

2. Employees not in dispute

The parties agree that the following employees are to included in the Unit: curbside recycle drivers, yard waste drivers, relief recycle drivers, roll off drivers, tractor-trailer drivers, commercial recycle drivers, welders, fabricators, mechanics, including class C mechanics (service techs), yard workers, transfer station operators, laborers, fuelers, maintenance workers, dispatchers, painters and painter helpers, employed by Murrey's Disposal, American Disposal, DM Disposal, American Portable Storage and DM Recycling.

The parties also agree that the following employees are to be excluded: employees at Tacoma Recycle, employees currently represented by another labor organization, confidential employees, clerical employees, administrative employees, guards and supervisors as defined by the Act.

Essentially, the Union is seeking an all-inclusive unit while the Employer seeks to exclude some classifications. The parties also have two narrow eligibility issues.

3. Community of Interest Standards

A variety of employees remain in dispute. In general, a Union may designate the unit, as long as it is *an* appropriate unit. An all-employee unit (excluding the standard exclusions) is presumptively appropriate. In assessing whether the employees should be considered part of the unit, I must determine whether the disputed employees share a sufficient community of interest with the undisputed, included classifications. See, e.g. *Warner-Lambert Co.*, 298 NLRB 993 (1990); *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972). Community of interest factors may include the nature of employee skills and functions, the degree of functional integration, interchangeability and contact among employees, common work situs, common supervision, geographic separation, and commonalities in general working conditions. See, e.g., *Seaboard Marine Ltd.*, 327 NLRB 556 (1999)(nature of employee skills and functions); *Atlanta Hilton & Tower*, 273 NLRB 87 (1984)(degree of functional integration); *J.C. Penny Co.*, 238 NLRB 766 (1999)(interchange and contact among employees); *Allied Gear & Machine Co.*, 250 NLRB 679 (1980)(general working conditions) *R-N Market*, 190 NLRB 292 (1971)(work situs); *Sears, Roebuck & Co.*, 191 NLRB 398 (1971)(common supervision). Functional integration is not limited to the degree of employee contacts, but also concerns the interrelation of the actual operations of the facilities. *Bry-Fern Care Center*, 21 F.3d 706, 710 (1993). In

assessing community of interest, no single factor need receive more weight than another; rather, the Board should review the factors as a whole in determining whether sufficient community of interest exists between employees. *Hotel Services Group, Inc.*, 328 NLRB 116 (1999).

II. Disputed Classifications

1. Hook Lift Driver

Darren Burres is the hook lift driver. Supervised by O'Connell, he punches in to work in the morning at the recycling yard. Burres picks up empty delivery containers or "boxes" from the recycle yard. The containers are used for recyclable materials such as mixed paper, tin aluminum, glass and cardboard. He drives a pickup truck with a roll-off system and a hook lift system. He delivers an empty container (4-20 cubic yards) to a customer, picks up a full container, and transports the full containers to Tacoma Recycling or Ideal Glass, where they are unloaded. Burres also delivers and picks up recycling materials in containers from the Puyallup Fairgrounds site.⁴ He wears a Waste Connections uniform. At the end of the day, he punches out at the recycling yard.

In these circumstances, the hook lift drivers should be included in the Unit. The hook lift driver drives a truck and deals with containers that are functionally integrated into the recycling process. The recycling process and procedure could not be complete without the pick up and unloading of the recycled materials handled by the hook lift driver. Besides the functional integration, the hook lift driver shares many interests with other drivers, including basic function (i.e., driving), terms and conditions of employment, as well as common supervision.

2. Roll-off Recycle Drivers

James Asmussen and Stanley Knighten are the current roll off drivers, who handle large containers of recycled goods. Initially, curbside recyclers pick up recycled goods and bring them back to the recycling yard. At the recycling yard they are separated and dumped into the large containers. The large containers, located at the recycle yard (20 cubic yard recycle boxes) are then loaded onto the roll-off recycler's trucks. Most separated recycled materials are taken to Tacoma Recycling, while glass is taken to Ideal Glass. The materials are dumped, and the empty box hauled back to the recycle yard. The cycle is repeated approximately 6-10 trips per driver per day.

In these circumstances, the roll-off recycle drivers should be included in the Unit. Functionally, the job is quite similar to the hook lift driver. The roll-off drivers drive trucks and deal with containers that are an important part of the recycling process, and functionally integrated into that process. The recycling process includes the transport and disposal of materials collected. The drivers are supervised, like other included employees, by O'Connell. Their terms and conditions of employment are also similar to other included drivers.

3. Container Delivery Drivers

The container delivery drivers, Allan Moulden and Darrell Lunsford, report to Murrey's yard. They haul empty dumpsters to customers (commercial and residential).

⁴ The work site of disputed recycling attendant Joseph Lowe.

Lunsford drives a heavy-duty pickup with a fifth wheel trailer (a flat bed trailer with rails on the side to contain the totes). He delivers empty residential yard waste totes to Pierce County residential customers. The yard waste totes are stored at the APS/DMR yard. He rolls the totes up onto his truck and rolls them off the truck when delivering them. Lunsford punches in and out at the recycle yard and wears a Waste Connections uniform. He is supervised by O'Connell. Lunsford is replaced by a relief recycle driver if he is not available to work.

Moulden delivers 1-6 cubic yard dumpsters to commercial and residential customers. He drives a flat bed truck with railings on the side and a lift gate system on the back to load and unload the containers. Moulden occasionally picks up containers as well when containers need repairs, or when there is a change in size of containers. The containers that he drops off are normally picked up by either the garbage side workers or recycle drivers, depending on the type of container. Moulden is supervised by O'Connell.

Functionally, it appears the drivers' job is to make the initial delivery of empty containers to a customer. Thereafter the container is filled by the customer and emptied/hailed off by other drivers. In these circumstances, the container delivery drivers should be included in the Unit. They drive trucks and deal with containers that are part and parcel of the recycling process, and functionally integrated into that process. The recycling process and procedure could not be complete without the delivery and use of the containers handled by these drivers. They are supervised, like other included employees, by O'Connell. Their terms and conditions of employment are similar to other drivers.

4. Lakewood Fabricator

Michael Moore is a welder/fabricator, who works by himself at Lakewood, about 26 miles from Fife. He performs heavy overhaul metal fabrication work in Lakewood, where the heavy equipment is located. Moore works a shift from 6:00 a.m. to 2:30 p.m. which is comparable to other employees. He receives the same benefits package as other employees and is subject to all of the Employer's policies. He is paid \$20. per hour, which is comparable to skilled mechanics working in the maintenance operation (who the Employer agrees should be included in the Unit). Moore is supervised by Barnett, the Maintenance Manager, who also supervises many other unit employees. Moore possesses skills similar to the welders in Fife, who are agreed to be in the Unit. He picks up supplies from the Fife shop. In one instance, Moore worked out of the Fife facility for several weeks after his tools were stolen. Moore has occasional contact with the mechanics located at Fife.

In these circumstances, Moore shares many of the terms and conditions of employment with other employees. He is paid hourly and has similar hours to other included unit employees. He does the same type of work as the welders in Fife and has worked with them before. He has the same supervisor as many Unit employees. Moore's interests are closely aligned to other Unit employees, particularly the welders. In addition, the Board, in fashioning large or overall Units, is reluctant to omit a "residual" group - i.e., a small group of "left-over" employees who have some community of interest with the Unit - when no other labor organization is seeking to represent them separately. *Huckleberry Youth Programs*, 326 NLRB 1272 (1998). This is especially true when the miscellaneous residual employees have even less community of interest with each other than they do with the Unit. *Airco, Inc.*, 233 NLRB 348 (1984). Thus, it is appropriate to include the Lakewood welder/fabricator.

5. Recycling Attendant (Puyallup Fairgrounds)

Joseph Lowe is the Recycling Attendant at the Puyallup Fairgrounds. He is supervised by O'Connell. In the morning, Mr. Lowe reports to the recycle yard and punches in. He first picks up a courier package at Fife to deliver to the Lakewood facility via a small company pickup truck, and returns with Lakewood's. He then goes to the Puyallup Fairgrounds, where he spends the rest of his day. At the Fairgrounds, he checks residency of those who drop off their recyclables, monitors drop-offs to prevent dumping of hazardous materials, and offers some degree of assistance to customers who need unloading help. Approximately three times a day, the hook lift operator picks up the collected recycled materials from the Fairgrounds, to haul to the Recycle Yard.

There are many similarities between Lowe and other Unit employees. He drives his truck (as a courier twice a day), maintains truck radio contact (like drivers), cleans the yard (like included laborers) and compacts some cardboard. He is the functional equivalent of the other recycling collectors, except the goods are brought to him, instead of being picked up. Lowe is paid similarly to yard laborers, attends mandatory company meetings, and shares common supervision. For all of these reasons, as well as the afore-mentioned "residual" group policy, I shall include him in the Unit.

6. Equipment Delivery Drivers

The equipment delivery drivers, Eugene Justice and Tim Rooney, haul storage containers to customers. The containers are used to store tools or inventory overstock. The drivers report to work at the APS/DMR yard, where they load empty containers at the recycle yard onto a roll-off truck. The containers are then generally delivered to customers, sometimes to be swapped out for an existing container. Eventually the containers are either returned to the recycle yard or moved to other customers. The drivers maintain Class A CDL with air-brake endorsements. They wear Waste Connections uniforms and report to Mathew O'Connell, the Operations Manager, who supervises many other drivers.

Although the containers are not be used for recycling, it would be erroneous to exclude these drivers from the Unit on that basis. These drivers are drivers like other included employees, punching in and out and returning to the same yard, subject to the same driving conditions and supervision, connected by radio, and relieved by other Unit drivers. In these circumstances, these drivers are properly included in the Unit. Moreover, they should be included in any event as residuals.

7. Simon and Sons Drivers

Simon and Sons is an unrelated company located in Tacoma that deals in scrap metal. There was no evidence that the Employer has any ownership interest in Simon and Sons. APS/DMR has a contract with Simon and Sons for APS/DMR drivers to haul scrap metal from Simon's customers to Simon's Yard. Two Murrey's drivers, Richard Peters and John Murey, are scheduled to drive for Simon's on a full-time basis. Essentially, the Employer has a contract to supply drivers and trucks to Simon, on an ongoing basis. No party contends they are not employees of DMR, their putative employer.

The drivers report every morning to the APS/DMR yard where they pick up their trucks and drive to Simon. Their job consists of picking up scrap metal from various Simon customers, such as Boeing, for delivery to Simon's scrap processing yard. The drivers occasionally drive longer distances than the stipulated Unit drivers, from Greater Seattle to locations such as Oregon and Canada, although these trips are not overnight trips. The Simon dispatcher

dispatches them, although Matthew O'Connell is considered their supervisor. Occasionally a third driver (from the included drivers) is used for Simon work; many Unit drivers have subbed in this manner.

These drivers share many similarities with other drivers. They report to Mathew O'Connell. Compared with other Unit employees, they have similar pay and working hours, wear identical uniforms, drive similar trucks, and are subject to the same policies and benefits package. The community of interest between the drivers outweighs the fact that the Simon drivers occasionally take longer trips, and that they are not part of the garbage/recycling process. Moreover, I also rely on the afore-mentioned residual policy. For these reasons, the Simon drivers must be included.

In conclusion, the parties have agreed to a unit that is basically an all-employee unit of the five inter-related entities. An all-employee unit is presumably appropriate. The parties agreed on the inclusion of about 76 individuals. Five additional individuals (discussed below) perform Unit work, but present eligibility questions. The status of a remaining group of 11 is in question. Of the 11, 5 are ⁵ drivers who move garbage or recyclables, or containers for same. They have a strong, clear community of interest with the Unit.

The remaining 6⁶ have a substantial community of interest, although they may work at a greater distance from the yard, and/or alone, and/or perform work not directly related to the core business of waste collection. However, it is appropriate to include them because of the degree of community of interest described, the presumptive appropriateness of an all-employee unit, and the "no residuum" policy.

III. Eligibility Issues

1. Laid off Local 313 Unit Drivers

At issue are four^{7, 8} employees currently working in recycling classifications, clearly performing Unit work. Prior to April 1, 2002, they were working as garbage drivers in the Local 313 unit, but were laid off on that date. They were then offered work outside that unit, in the positions they currently fill. When laid off, they were told that there was a possibility of recall to their former jobs. They were not guaranteed a return to their former jobs; their Local 313 contractual recall rights expire after 6 months of layoff.

There was no testimony that their current job positions are merely temporary, i.e., that they were hired only for a specific duration or a specific project. In other words, while these drivers have a chance of being recalled, there is no evidence that they cannot/will not retain their current jobs, which would be included in the Unit. As a result, it appears that the employees were hired for an indefinite duration, are performing Unit work, and are therefore eligible to vote (assuming they are still employed on the eligibility period and date of the election). See *Personal Products Corp.*, 114 NLRB 959 (1955); *Lloyd A. Fry Roofing Co.*, 121 NLRB 1433 (1958); *United States Aluminum Corp.*, 305 NLRB 719 (1991). I note that it is not

⁵ See II, 1-3.

⁶ II, 4-7.

⁷ Initially there were 5 such drivers, but one driver, Matt Schakel, has been recalled to the Local 313 unit side.

⁸ Darrell Lunsford, Jason Torrey, Jim Davis, and Robert Palfy. Lunsford, at the time of the hearing, was delivering yard waste totes to residential customers. Torrey and Palfy were working as residential yard waste drivers. Davis was a residential curbside recycling driver.

anomalous to hold “positions” in two units at the same time, Cf. the concept of dual-function employees.

2. Justin Herring

Justin Herring is District Manager Dwight Herring’s seventeen-year-old son. Justin is a student and resides with his father. He works as a yard laborer, where his duties generally include cleaning the garbage yard, cleaning totes, performing miscellaneous projects and assisting other yard laborers. During the school months, he works part-time and during the summer months he has worked full-time.

There was no evidence that Herring enjoys any special status *on the job* because his father is the District Manager.⁹ The only real difference between Herring and other employees is the hours that he works - part-time while in school, full-time during the summer. He does not receive a higher salary or any special benefits, or treatment. In fact, he is ineligible for benefits because he does not work enough hours to qualify. In these circumstances, he is included in the Unit and eligible to vote. See *Weyerhaeuser Co.*, 211 NLRB 1012 (1974); *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 498 fn.7 (1985); *Vincent M. Ippolito, Inc.*, 313 NLRB 715, 719 (1994).

There are approximately 92 employees in the Unit.

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 those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Teamsters, Local 599.

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 their 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*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction

⁹ No doubt it is not coincidence that he happened to acquire a job at his father’s employer.

of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before August 9, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by August 16, 2002.

DATED at Seattle, Washington, this 2nd day of August 2002.

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