

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Sunnyvale and Ceres,
California)

GREEN TEAM/ZANKER OF SUNNYVALE and
MARCOS RENTERIA AGRICULTURAL SERVICES, INC.,

Employer¹

and

SANITARY TRUCK DRIVERS
AND HELPERS UNION,
LOCAL 315, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO,

Case 32-RC-4953

Petitioner

DECISION AND DIRECTION OF ELECTION

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

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, including the briefs and the parties' arguments made at the hearing, the undersigned finds:²

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

2. Green Team/Zanker of Sunnyvale, hereafter Green Team, joint venture between Green Team of San Jose, a California venture and Zanker Road Resource

¹ The name of the Employer appears as corrected at the hearing.

² Marcos Renteria Agricultural Services, Inc. did not submit a brief.

Management, Ltd, a California limited partnership, has a place of business at 301 Carl Road, Sunnyvale, California. Green Team is engaged in the operation of a material recovery and recycling facility. During the past twelve months Green Team purchased and received materials and supplies valued in excess of \$50,000 directly from points located outside the state of California.

Marcos Renteria Agricultural Services, Inc., hereafter Renteria, a California corporation, is engaged in labor contracting from its place of business in Ceres, California. Renteria provides labor services to Green Team at its 301 Carl Road location. During the past twelve months, Renteria received in excess of \$50,000 for the performance of labor services from Green Team, an employer which meets the Board's standard for assertion of jurisdiction on a direct basis.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner seeks to represent a unit of all full-time and regular part-time recycling employees employed at Green Teams' Sunnyvale, California location, excluding all other employees covered by any other collective bargaining agreement, office clerical employees, guards, and supervisors as defined by the Act.³ A question affecting commerce exists concerning the representation of certain of these employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Renteria and Petitioner contend that Renteria and Green Team are joint employers. Green Team contends that it is not a joint employer with Renteria. For the

³ The parties stipulated that the unit sought by Petitioner is an appropriate unit.

reasons set forth below, contrary to the assertions of Green Team, I find that Green Team and Renteria are joint employers.

THE FACTS

The city of Sunnyvale directs certain recycling programs in the Sunnyvale area. Green Team has a contract with Sunnyvale to process garbage that is delivered on a daily basis by the cities of Sunnyvale, Mountain View, and Palo Alto to Sunnyvale's transfer station located at 301 Carl Road, also known as the "Smart Station", herein called the facility. The facility maintains a tipping floor where residential, commercial, and construction garbage is dumped. Sunnyvale requires Green Team to produce recycled materials at a predetermined "diversion rate". Thus, Green Team must divert, or recover, a minimum of 14.7% of input tonnage in recycled goods to meet the standards desired by Sunnyvale as part of its recycling program.

Prior to November 2000, Green Team employed its own employees to perform sorting duties at the facility. However, on or about November 22, 2000, Green Team entered into an agreement with Renteria to supply the recycling employees who manually sort through the garbage at the facility for recoverable materials. These recycling employees are referred to as sorters.

In addition to the tipping floor, there is a section of the facility devoted to curbside operations where residential garbage that has already been divided into separate containers is sorted by about 14 to 17 sorters. Upstairs there is the materials recovery floor, MRF, where approximately 50 sorters go through garbage on conveyer belts, separating usable paper and aluminum. There is also a wood room where varying numbers of sorters remove

metal and plastic from green waste and wood. Usable material is dropped into bailing machines, bailed, and removed by truck.

All sorters, whether they are assigned to the MRF, curbside operations, tipping floor, or wood room, work alongside other recycling employees of Green Team including equipment operators and drivers. Whenever sorters are scheduled to work at the facility, Green Team equipment operators and drivers are also scheduled to work. The Green Team equipment operators and drivers are covered by existing collective bargaining agreements and are not sought by any party to be included in the unit herein. The record does not indicate how many Green Team equipment operators and drivers are assigned to each area of the facility.

Green Team General Manager, Roger Hoffman is responsible for maintaining recycling operations at the facility in accordance with Green Team's contract with Sunnyvale. Green Team MRF Supervisors, Miguel Ruiz and Tom Weis report to Hoffman. In addition, assistant supervisors Theresa Munoz, Esperanza Fernandez, Valentina Brinley, Geronimo Martinez, Pablo Salinas, Jorge Orjael, and Darin Evans monitor recycling on the tipping floor and curbside operations.

The agreement between Green Team and Renteria is not contained in a written contract. However, the record reflects that when Green Team and Renteria entered into that agreement, Green Team set an hourly wage rate of \$7.25 for the sorters and agreed to pay the cost of Renteria's gross payroll, plus a charge calculated at 40% of gross payroll. Renteria is responsible for processing the payroll of the sorters and for paying their social security deductions, workers compensation insurance, and unemployment insurance.

Renteria covers these costs out of the 40% of gross payroll paid by Green Team. At the time the agreement was negotiated, Green Team representatives also stated that they would grant a pay increase for sorters after 90 days. Although Renteria has repeatedly requested that the hourly wage rate of the sorters be increased, Green Team has declined to grant any increase until the sorters increase Green Teams' diversion rate. Renteria did not provide a wage increase because there was not enough money to cover an increase in the 40% charge over payroll.

Renteria is not charged office rental space by Green Team. Renteria does not pay for telephone or fax services used by its supervisors at the facility. Green Team supplies and pays for the uniforms and safety equipment used by the Renteria sorters.

As of November 2000, Renteria had no previous experience providing recycling sorters to any employer. Accordingly, Green Team provided two of its own experienced recycling employees, Luz Herrera and Manuel Najera, to be hired by Renteria to supervise the sorters. The record does not disclose whether any of the other recycling employees employed by Green Team prior to November 2000 were also hired as sorters by Renteria.

Herrera is the head Renteria supervisor. She spends most of her time at a desk in the office. However, she spends time in the MRF when she relieves the break assistant for breaks. She also spends time on the tipping floor and at the curbside operation where she makes sure that the sorters are working properly and wearing their safety equipment.

Najera supervises 23 sorters in the MRF on the morning shift from 6:00 a.m. to 12:30 pm. In addition, Renteria supervisor Manuel Diaz supervises 24 MRF sorters on the afternoon shift from 2:00 p.m. to 10:30 p.m. Renteria supervisor Jose Luis Gonzales is

responsible for sorters working on the tipping floor and Renteria supervisor Antonio Baylon is responsible for sorters working in curbside operations. Herrera, Najera, Diaz, Gonzales and Baylon work full-time at the facility supervising the work of the sorters. In addition to paying the hourly rate of the sorters, Green Team also pays the wages of all of the above Renteria supervisors.

Renteria owner, Marcos Renteria visits the facility anywhere from once every eight days to once a month. When present he observes his supervisors to monitor whether they are giving the sorters the proper instructions on quality recycling and safety procedures.

All sorters and Renteria supervisors punch Green Team time cards in the same time clock used by Green Team employees at the facility. Renteria does not pay Green Team for the time cards used by its supervisors and sorters.

In addition to time cards kept by Green Team, Herrera keeps hand written records of employees' hours for Renteria. She submits these records to the Renteria office in Ceres, California. That office generates a billing invoice which is sent to Green Team for payment of the employee hourly rate. Green Team compares its own time records with the invoices and discusses any discrepancies with Herrera which are resolved before payment is made by Green Team. Thereafter, Renteria cuts employee paychecks and Herrera and the other Renteria supervisors distribute the paychecks to the sorters at the facility.

Renteria is responsible for advertising and recruiting new sorters. It supplies prospective sorters with applications and interviews them at the facility. Herrera informs new employees that they have been hired. However, Green Team supervisors direct

Herrera and the other Renteria supervisors when to hire new employees and in some cases which specific employees to hire.

When new sorters report to the facility for the first time, Herrera instructs them on how to search and recover materials. She also decides where in the facility to assign new workers. However, Green Team independently directs that sorters be reassigned or transferred, as needed. For example, if a larger than expected load comes in, Green Team supervisors direct sorters to leave their assigned stations and report to the tipping floor. Up until recently, Green Team supervisors have transferred sorters directly. More recently, Green Team supervisors direct the Renteria supervisors to re-assign or transfer the sorters to a different location.

Green Team supervisors Ruiz and Weis are regularly assigned to the MRF where most of the sorters are assigned. They are responsible for making sure that the material being retrieved by sorters is of good quality and they are present to monitor the work of the sorters. However, the record is equivocal on this point because Herrera, who testified through an interpreter, testified that there is never a Green Team supervisor present in the MRF. In any event, the record further indicates that the performance of the MRF sorters is recorded by cameras located in that area as well as throughout the facility. Those cameras feed onto screens which are monitored in Green Team General Manager Hoffman's office.

While the record reveals that Green Team supervisors have been instructed not to interfere with Renteria's supervision of the sorters, Green Team supervisors have instructed the Renteria supervisors to make sure that the sorters are working properly because poorly sorted material prevents Green Team from meeting the diversion standards

set by Sunnyvale, and thereby causes Green Team to lose revenue. The record is also clear that, notwithstanding the proscription against interference with Renteria supervisors, Green Team supervisors, assistant supervisors and leadmen, in fact, direct the work of the sorters. Thus, Green Team curbside assistant supervisor Theresa Munoz directs the sorters in their activities in the curbside operation. In addition, Green Team wood room leadman Thomas Mendoza directs the activities of the sorters in such matters as opening bin doors, dumping materials, removing materials from wood, cleaning wood, and assisting in the cutting of wood. Mendoza has also reported to Green Team supervisors that sorters are allowing metals and other contaminated materials to pass through the grinding machines. Green Team supervisors then direct the sorters to be sure that such materials are removed before wood passes through grinders.

Sorters go to Renteria supervisor Herrera when they want a day off and report to her when they are unable to work due to illness. When Green Team has requested additional sorters from Renteria, for example, on a “free dump day” when more garbage than usual is expected, Renteria obtains those additional employees. If as it turns out, there is not as much work as expected for those extra sorters, Herrera may direct the sorters to leave early.

However, Green Team alone directs and schedules all over time worked by sorters and pays the extra wages required when it directs such over time work.

Renteria does not evaluate the work performed by the sorters due to the high turnover of employees.

Herrera has disciplined sorters for horseplay by issuing suspensions. Since November 2000, she has fired approximately 50 sorters at the direction of Green Team supervisors and assistant supervisors Evans, Fernandez, Ruiz, Brinley, and Martinez. The record reflects that Herrera is directed by Green Team to terminate sorters when there is a slow down in work. In such circumstances, Green Team does not select the employees to be terminated. Renteria simply terminates the most recently hired sorters. Green Team does not instruct Renteria to assign the terminated employees to other Renteria clients.

Herrera has also been directed to terminate sorters under circumstances where specific employees are performing poorly, don't work sufficiently fast enough to remain employed, or engage in misconduct. In one such case, Herrera thought an employee should be given another chance, but Green Team supervisors Salinas and Fernandez insisted that the employee be terminated, and he was.

ANALYSIS

A finding that employers are joint employers assumes, in the first instance, that the entities are what they appear to be—independent legal entities that have merely chosen to handle jointly important aspects of their employer-employee relationship. NLRB v. Browning-Ferris Industries, 691 F.2d 1117 (1982). Thus, the joint employer concept recognizes that the business entities involved are in fact separate, but that they share or codetermine those matters governing the essential terms and conditions of employment. To establish joint employer status, there must be a showing that the alleged joint employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision and direction. M.B. Sturgis, Inc., 331 NLRB No. 173 (2000);

Chesapeake Foods, 287 NLRB 405, 407 (1987); Island Creek Coal, 279 NLRB 858 (1986).

In the instant case, Renteria is responsible for hiring sorters, paying their wages, deducting their taxes, paying unemployment and workers' compensation insurance, making initial assignments, and providing daily supervision and direction of the sorters' work.

On the other hand, Green Team sets the sorters' hourly wage rate and decides whether its diversion rate is high enough to grant sorters a wage increase. It also exercises control over the sorters by reassignment and transfer of sorters to various work locations as it deems appropriate. Additionally, Green Team directs that specific employees be hired, directs that specific employees be fired, decides when a reduction-in-force is necessary, and provides and pays for sorters' time cards, uniforms, and safety equipment. Under similar circumstances in Continental Winding Company, 305 NLRB 122 (1991), the Board found a joint employer relationship where the entities shared a similar division of authority and responsibility regarding the employees in question, and where the supplier employer agreed to take corrective action against employees on complaints of the user employer and the user employer maintained time cards for the supplier employees.

In addition, the Green Team supervisors provide a constant presence and a high degree of awareness and control of the daily activities of the sorters. The Board has emphasized even routine supervision as a vital component of joint employer status. Thus in Quantum Resources Corp., 305 NLRB 759, 760 (1991) the Board relied on the fact that superintendents of the user employer closely and routinely supervised unit employees in

finding a joint employer relationship. Similarly, in G. Heileman Brewing Co., 290 NLRB 991, 999 (1988), the Board noted that user employer personnel supervised and directed the work of the employees to the extent that it determined that such supervision and direction was necessary. In the instant case, daily supervision and direction by Green Team personnel to oversee the quality of the sorters' work tends to establish that Green Team is a joint employer with Renteria.

Furthermore, it is undisputed that Green Team alone decides whether sorters will work overtime and directs that such overtime be worked. Board law considers the authorization of overtime to find joint employer status. Thus, in Quantum Resources, supra, 305 NLRB759, 760-761, the Board relied on the user employer's authorization of overtime in finding that it was a joint employer. See also D&S Leasing, 299 NLRB 658, 671, where the joint employer exercised control over the number of hours unit employees worked. Under such circumstances, it is apparent that Green Team and Renteria affect and codetermine essential terms and conditions of employment of the sorters supplied by Renteria.

Green Team cites several cases in support of its contention that it is not a joint employer. However, these cases are inapposite.

Thus, in ISI, Inc., 297 NLRB 1059, the Board agreed with the ALJ that a user employer was not a joint employer with the supplier employer of warehouse employees who filled orders for a manufacturing plant. In that case there was a written contract designating that the supplier employer was an independent contractor of the user employer. Direction of employees was performed by the supplier employer.

Representatives of the user employer directed the employees in a limited and routine fashion, unrelated to the general types of work performed by the employees. For example, they directed an employee to pick up some paper on the floor. Similarly, in contrast to the instant case, the supplier employer played no role in assigning or transferring employees. The only involvement in discipline by the user employer was telling an employee operating a fork lift that he was not authorized to use the equipment. Unlike the instant case, the supplier employer advised the user employer that overtime should be worked and selected which employees would work overtime. Finally, uniforms worn by the employees were provided by the supplier employer, not the user employer.

Green Team also relies on Laerco Transportation, 269 NLRB 324 (1984), where the Board found that the user employer of warehousing employees and drivers was not a joint employer with the supplier employer. The Board relied on the fact that the user employer itself supplied the employees in question to its clients and had no presence at many of the warehouses in question. Where the user employer had a presence, the limited nature of the supervision it supplied to employees was insufficient to establish a joint employer relationship. The Board specifically noted the fact that the material terms and conditions of employment of the petitioned-for employees were determined by the supplier employer and an intervening union which had broad collective bargaining agreements covering the petitioner-for employees. In the instant case, Green Team is present at the facility on a daily basis in the person of 9 supervisors and assistant supervisors, and a leadman who directs and supervises the sorters' work and there is no collective bargaining

agreement between Renteria and any labor organization which controls the material terms and conditions of the sorters.

Similarly, Green Team cites Chesapeake Foods, supra, 287 NLRB 405 (1987), in support of its position. There, the ALJ found that a user employer operating a chicken processing plant was the joint employer of a supplier employer which employed employees as chicken catchers at nearby farms. The Board reversed the ALJ noting that the employees did not report to the user employer's plant and that there was no showing that any supervisor of the user employer supervised the chicken catchers' performance or exercised any control over them while at the farms. Moreover, consistent with the Board's determination in Laerco Transportation, supra, the Board noted that the catchers' material and essential terms and conditions of employment were dictated by the collective bargaining agreement between the supplier employer and a union. In comparison, in the instant case, again, Renteria is not signatory to any collective bargaining agreement covering the sorters, and Green Team has a significant presence at the facility, exercising a significant role in their direction and supervision.

Finally, Green Team relies on Villa Maria Nursing and Rehabilitation Center, 335 NLRB No. 99 (2001). There, the Board adopted the ALJ's finding that a supplier employer which provided housekeeping and laundry employees to a nursing home was not a joint employer with the user employer. In dismissing the complaint against the supplier employer, the ALJ found that the user employer did not oversee the daily work or exercise indirect but effective control over the supplier employer's laundry and housekeeping employees. Specifically, the user employer had no authority to hire, fire, suspend, or

otherwise discipline, transfer, promote, or reward, or lay off or recall from layoff the supplier employer's employees. In the instant case, the record establishes that Green Team exercises control over hiring, firing, establishing wage rates, transfer, assignment to work overtime, and layoff.

CONCLUSION

Based on the record and the analysis above, I conclude that the various factors described above in determining joint employer status conclusively establish that Green Team and Renteria are joint employers. See Quantum Resources, supra; Lodigan, Inc., 332 NLRB No. 128 (2000).

6. The following employees of Green Team and Renteria constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time recycling employees employed at the Employer's facility located at 301 Carl Road, Sunnyvale, California, excluding all employees covered by other collective bargaining agreements, office clerical employees, guards, and supervisors as defined by the Act.

There are approximately 70 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.⁴ Eligible to vote are those in the unit who are employed during the payroll period ending

⁴ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

immediately preceding the date of the 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 Government 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 to vote shall vote whether or not they desire to be represented by SANITARY TRUCK DRIVERS AND HELPERS UNION, LOCAL 315, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

LIST OF VOTERS

In order to ensure 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 in 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 v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359, 361, fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) 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. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before March 26, 2002. 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, N.W., Washington, DC 20570. This request must be received by the Board in Washington by April 2, 2002.

Dated at Oakland, California this 19th day of March, 2002.

/s/ Bruce I. Friend
Bruce I. Friend
Acting Regional Director
National Labor Relations Board, Region 32
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