

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

(San Jose, CA)

BFI WASTE SYSTEMS OF
NORTH AMERICA, INC.

Employer¹

and

Case No. 32-RC-5016

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 350, AFL-CIO

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,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 parties stipulated, and I find that the Employer, a Delaware Corporation, with its principal office located in Scottsdale, Arizona, is engaged in waste collection, disposal, and recycling operations for retail and commercial customers and has facilities located throughout the United States, including its facility located in San Jose, California. During the past twelve months, the Employer has received gross revenues in excess of \$500,000. During this same

period, the Employer has also purchased and received at its California locations products valued in excess of \$50,000 directly from suppliers located outside of the state of California. Thus the Employer meets one or more of the Board's standards for assertion of jurisdiction on a direct basis. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

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. Petitioner seeks to represent a unit limited to all full-time and part-time drivers and helpers. The Employer contends that the maintenance employees, including the mechanics, bin/container repair employees, and welder employees, share such a strong community of interest with the drivers that the only appropriate unit is a unit composed of the drivers, helpers and the maintenance employees. The parties agree and stipulate that all other employees should be excluded from the unit. In particular, the parties stipulated that certain drivers and helpers employed by the Employer in the yard waste operations should be excluded from the unit, because the Employer had previously decided and announced that the employment of the yard waste operations employees was to be terminated at the end of June 2002.

THE FACTS

1 The Employer's and Petitioner's names appear as stipulated to at the hearing.

2 The Employer and Union both submitted briefs, which have been duly considered.

The Employer collects garbage and materials for recycling from customers throughout Santa Clara County. The Employer's facility is located at 1995 Old Oakland Road in San Jose, California.³

The Employer's corporate office is located in Scottsdale, Arizona, and it establishes the Employer's human resources policies. A company handbook is provided to all employees and includes work rules that apply to all employees. The Employer provides all drivers, the helpers and the maintenance employees with the same benefits package, consisting of health, vision, dental, life, and short-term and long-term disability insurance; a 401k plan; a retirement plan, and vacation. ADP processes the payroll for the drivers, the helpers and the maintenance employees, and they all receive their paychecks on Fridays. Payroll and personnel records for drivers, the helpers and the maintenance employees are kept at the San Jose facility. The personnel files are filed alphabetically and are not separated by job classification.

The Employer employs approximately 36 drivers and helpers⁴ and approximately 18 maintenance workers at the San Jose facility. In addition to the drivers, helpers and maintenance employees, the Employer employs office clerical employees and supervisory/managerial personnel. The general manager (name not identified in the record) has ultimate responsibility for the operation of the facility and is at the top of the Employer's supervisory structure for the San Jose facility. Therefore, the general manager ultimately has supervisory/managerial authority over the drivers, the helpers and the maintenance employees. There are five managerial positions under the general manager: sales manager, office manager, safety and operations manager, shop maintenance manager, and controller. Each of these managers reports

³ Unless otherwise specified, the evidence set forth in this Decision pertains to Employer's San Jose facility.

⁴ Although the record is not absolutely clear, it appears that there is currently only one employee who is employed by the Employer in the helper classification. It is not clear whether the number of employees in the helper position has always been or will always be limited to one employee. Therefore, for purposes of this Decision, I will use the

directly to the general manager. The office manager, Margo Milioto, is responsible for human resources matters relating to all employees at the San Jose facility. The shop maintenance manager is Terry Smith, and he is the person to whom the maintenance department employees report. The safety and operations manager is Bonnie Cantlon. Four route supervisors report directly to Bonnie Cantlon, and their respective positions are: the Milpitas residential supervisor (Ralph Campa), the roll-off supervisor (name not identified in the record), the front-load supervisor (name not identified in the record), and the San Jose yard waste supervisor (name not identified in the record). The drivers and the helpers report to these route supervisors,⁵ except that one container delivery driver, who is supervised by a route supervisor, also reports to Terry Smith for some driving errands for the shop.

There are three categories of drivers: Milpitas residential drivers, front-load drivers, and roll-off drivers. Eight trucks and eight drivers are assigned to the Milpitas residential department. The Milpitas residential drivers collect residential trash, recyclable materials, and yard waste. The Milpitas residential drivers work from 6:00⁶ until their route is finished.

There are currently thirteen front-loading trucks, thirteen front-load drivers and one helper in the front-load department. The front-loaders collect commercial waste bins. They collect the waste and recyclable materials from the commercial bins and bring those materials to the applicable site. The helpers, who report to the front-load supervisor, accompany a front-load driver on the route and assists the driver. With the front-loaders, the routes have varying starting times, so drivers start as early as midnight and as late as about 4:00 a.m.

term helpers rather than the term helper.

⁵ According to the testimony of Bonnie Cantlon, any of the supervisors may take disciplinary action against any of the drivers.

⁶ It is not clear from the record whether the witness was referring to 6:00 a.m. or p.m.; however, based on the record as a whole, it appears that the Milpitas residential drivers begin their shift at 6:00 a.m.

There are fourteen roll-off trucks and fourteen roll-off drivers. The roll-off drivers operate the equipment that delivers the large twenty-, thirty-, and forty-yard containers and compactors. The work of the roll-off drivers is somewhat different from that of the front-loader drivers in that they empty a different type of waste bin and drive a different type of truck. The roll-off drivers also have varying start times, beginning between about 1:00 a.m. and 4:00 a.m. Both the front-load drivers and the roll-off drivers work until they have completed their routes, more than an eight hour day. The route supervisors or the dispatcher make up the drivers' and helpers' work schedules and routes, and these employees' hours are, in effect, determined by the route they are assigned. Because route assignments are based in part on seniority, the safety and operations manager keeps a seniority list of the drivers and helpers.

Certain drivers for the front-load and roll-off trucks have permanent routes assigned to them and receive incentive pay, based on the number of cubic yards of refuse collected by the driver. The hourly base wage rate for front-load drivers and roll-off drivers is \$21.32 per hour. The hourly base wage rate for the Milpitas yard waste drivers is \$18.50. For the Milpitas recycling drivers, the hourly base wage rate is \$19.00, and for the Milpitas garbage drivers it is \$21.32. The helpers receive an hourly base wage rate of about \$16.50 or \$17.00 per hour. Drivers also receive an overtime premium for overtime work.

The Employer's drivers are subject to Department of Transportation (DOT) regulations, and the company follows the DOT standards for the maximum number of hours a driver can work. It appears that the drivers have Class A and/or Class B licenses. Some of the mechanics have Class A or Class B licenses, but such a license is not a job requirement for the mechanics. The record does not indicate whether any welders or bin/container repair employees have a Class

A or Class B license. The maintenance department employees are not subject to DOT regulations.

In the maintenance department, there are nine mechanics, six welders and two bin/container repair employees. The bin/container repair employees work the day shift and maintain the bins/ containers that are used by the customers. The welders work on the bins/containers and the trucks. One welder works the day shift from 6:30 a.m. to 2:30 p.m. and the others work from 2 p.m. until 10:30 p.m.

The mechanics are responsible for maintaining the trucks used by the drivers by making sure that those pieces of equipment are mechanically sound and run safely. The fully trained mechanics generally can do all of the various types of repairs needed for the Employer's trucks. In addition to the work they perform on the above-described trucks, the mechanics do maintenance work on a vintage truck, which is used for parades and other community events, about three or four times a year. The mechanics also service the tractors for the yard waste program, which the Employer will no longer operate after the end of June. The mobile mechanic works the day shift, from 6:30 a.m. to about 2:30 p.m. The other mechanics work from 2:00 p.m. until 10:30 p.m. Two of the mechanics had previously been employed as drivers for the Employer. When they switched jobs to become mechanics, they kept their original dates of hire. It is unclear from the record when the two drivers transferred to the maintenance department. There is no evidence that any mechanic has ever switched jobs to become a driver.

The operations and safety manager, Bonnie Cantlon, was the only witness at the hearing. She admitted that she is not familiar with the wages of the maintenance department employees. She states, however, that the wages of the mechanics, welders and bin/container repair workers are set by the general manager, and that it is her understanding that they are paid different

amounts than what the drivers are paid. The evidence also shows that the mechanics are paid hourly and receive an overtime premium for overtime work. When the maintenance employees work overtime, Terry Smith is in charge of approving their overtime.

The drivers, the helpers and the maintenance employees all wear uniforms provided by the Employer, consisting of shirts and work pants, shorts, and/or coveralls. Most of the uniforms are blue. The Employer does not require maintenance employees to wear a uniform different from that of the drivers. The majority of the drivers wear shorts or pants and a shirt and a couple wear coveralls. The maintenance employees all wear coveralls. Each employee wears a badge that includes the letters BFI and the employee's name. There is a locker room where drivers and shop personnel can change their clothes and store personal items. It is not unusual for the drivers and maintenance employees to be in the locker room at the same time.

The drivers and helpers interact with the maintenance employees as follows: The San Jose facility encompasses four buildings, an office and dispatch area, shop, bin shop and wash station. The mechanics work in the shop. The welders and bin/container repair employees work in the bin shop. Both the drivers and office staff enter the shop on occasion. The drivers enter the shop on a daily basis to talk to the mechanics about truck problems or repairs for their trucks and bins/containers; to turn in their paperwork at the end of each day's route; or to converse socially. The roll-off drivers also enter the bin shop approximately two to three times a week, because they work with the bins/containers, which may need repair or replacement.

The drivers notify mechanics that their truck needs repair via a vehicle condition report, which drivers fill out daily. If the mechanic has a question about the vehicle condition report, he/she can speak directly to the driver about the report. The drivers also talk directly to the mechanics to notify them of a problem. Drivers and mechanics probably speak face to face on a

daily basis. If a driver's truck is inoperable, the driver will use a spare vehicle. If the driver has mechanical difficulty on the road, he/she calls dispatch and the mobile mechanic goes out to repair the vehicle. When the mobile mechanic goes out to repair a vehicle, the driver of the vehicle is present to explain to the mechanic the nature of the problem.

The only times mechanics drive the waste trucks is to test drive them after a repair or, on occasion, when a truck in need of repair has been left partially or fully loaded in the yard, before starting on the repairs, the mechanic will drive the truck to the landfill area and empty it. Other than to advise the mechanics of problems with the trucks or bins/containers; however, the drivers have no work-related reasons to talk to the mechanics. Similarly, the helpers have no work-related need to talk to the mechanics.

There is an employee break room located in the shop, with one outside entrance. The drivers, the helpers and the mechanics use the break room. The bin/container repair employees and welders may also use the break room. The office clerical employees do not use that break room. The break room contains a television, tables, chairs and vending machines. It is not unusual for the drivers and maintenance employees to be in the break room at the same time.

The drivers, helpers and maintenance employees are all allowed to take a mid-shift meal break. Because the drivers and helpers spend the bulk of their working time in the field, they usually take this break in the field. The maintenance employees usually take this break at the San Jose facility in the break room.

The Employer occasionally conducts safety meetings for the employees at the facility, although, the different departments are usually scheduled to have their meetings at different times. Thus, the evidence shows that the front-load drivers are scheduled to have safety meetings at a different time than the Milpitas residential drivers. The maintenance department

employees meet at a different time than the drivers; although, the drivers may come to the maintenance meeting, if they missed the meetings held for their job classification. If a driver, helpers or mechanic commits a safety violation, the safety manager investigates the incident, files all paperwork with the insurer and, in the case of Workers Comp, keeps the files and communicates with the employee and the insurer.

Most employees, including drivers and maintenance employees, drive to work. They all may park in the employee parking lot, which is not segregated by job classifications. Drivers, the helpers and the maintenance employees clock in and out on a time clock; however, the drivers and helpers use a time clock located in the office, and the maintenance employees use a time clock located in the shop.

POSITION OF THE PARTIES

Petitioner seeks to represent a unit limited to drivers and helpers. The Employer contends that the petitioned-for unit is not an appropriate unit and argues that the maintenance employees share such a strong community of interest with the drivers that the only appropriate unit is a unit composed of the drivers, the helpers and the maintenance employees.

ANALYSIS

There is no dispute that the helpers should be included in the unit with the drivers. Moreover, the Employer's only basis for challenging the appropriateness of the petitioned for unit is its claim that the petitioned for unit must also include the maintenance employees in order to be an appropriate unit. If the drivers/helpers unit is an appropriate unit, it is irrelevant whether the larger unit sought by the Employer is also an appropriate unit. Morand Bros., Beverage Co., 91 NLRB 409, 418 (1950). To determine whether the truck drivers and helpers share such an overwhelming community of interest with the maintenance employees as to render the

petitioned-for unit inappropriate, the Board will evaluate whether the two groups of employees have related or diverse duties; a similar mode of compensation; common hours and supervision; significant contact and interchange, and other similar or disparate conditions of employment. E.H. Koester Bakery Co., Inc., 136 NRLB 1006, 1011 (1962); Mc-Mor-Han Trucking Co., Inc., 166 NRLB 700, 701 (1967); Overnight Transportation Co., 322 NLRB 347, (1996); Novato Disposal Services, Inc., 330 NLRB No. 97, (2000). Having reviewed the evidence presented by the parties, I find that the maintenance employees do not share such an overwhelming community of interest with the drivers/helpers to mandate their inclusion in the unit.

I have reached this conclusion for the following reasons. First, the duties of the drivers and helpers are considerably different from those of the maintenance employees. The drivers and helpers spend the bulk of their time away from the facility driving the trucks and collecting and transporting refuse and recyclable materials. The maintenance employees spend the bulk of their time repairing equipment, and other than the mobile mechanic, the maintenance employees perform their work at the Employer's facility. The drivers and helpers also possess different skills and qualifications than do mechanics, and unlike maintenance employees, the drivers are required to possess special drivers licenses and are subject to DOT regulations.

With regard to compensation, there are again some significant differences. Although all of the employees receive the same benefits, drivers are paid a different base wage rate than are maintenance employees. Moreover, permanent roll-off and front-load drivers, unlike maintenance employees, are paid under an incentive pay system. The hours of the drivers and helpers also differ significantly from those of the maintenance employees. Most drivers and the helpers begin work from sometime between midnight and 4 a.m. and work until their routes are finished, while most maintenance employees work from 2 p.m. until 10:30 p.m. The Employer

maintains a seniority list of drivers that helps it determine schedules and routes for the drivers; however, there is no such list or assignment system for the maintenance employees.

With regard to the interchange and contact between the drivers and helpers and the maintenance employees, the evidence establishes that the drivers and helpers do not perform any maintenance functions. Similarly, the only time maintenance employees drive one of the trucks is in the course of repairing equipment, including emptying the vehicles prior to repair.

Although two drivers have, over an indeterminate period of time, become maintenance employees, no maintenance employees have become drivers, and there is no evidence of any short-term interchanging of jobs or job duties. Work-related contact, though it occurs on a daily basis, is essentially limited to some social exchanges and discussions regarding vehicle problems and repairs.

It is also significant that the drivers and helpers have different immediate supervisors than the maintenance employees. Furthermore, the person who supervises the immediate supervisors of the drivers and helpers does not directly or indirectly supervise maintenance employees. Finally, drivers and the helpers punch a different time clock, typically take a separate mid-shift break, attend separate safety meetings, and wear slightly different uniforms than do maintenance workers.

In support of its argument that the petitioned for unit is not an appropriate unit, the Employer presented evidence that all employees receive the same benefits and are subject to the same Employer rules. The Employer also presented evidence that there is regular social and work related contact between drivers and maintenance employees and that there is some interchange between the drivers and the mechanics. For example, the Employer provided evidence that mechanics drive the Employer's trucks to the extent necessary to perform their

maintenance work, and that two drivers at some point in time transferred to become maintenance employees. Because the evidence as a whole shows that the drivers and helpers have very different duties and skills than the maintenance employees; most drivers have work hours and pay scales that are distinct from those of the maintenance employees; there is very little routine interchange in the work assignments between the maintenance employees and the drivers and helpers; and the maintenance employees' immediate supervision is separate from that of the drivers, I conclude that the community of interest between the maintenance employees and the drivers and helpers is not so strong that the petitioned for drivers/helpers unit would be inappropriate without the inclusion of the maintenance employees. Overnite Transportation, 322 NLRB 347 (1996) and Novato Disposal Services, Inc., 330 NLRB No. 97, (2000).

Accordingly, I find that the following employees of the Employer constitute an appropriate unit within the meaning of Section 9(b) of the Act and that it is appropriate to direct an election in such a unit:

All full-time and regular part-time drivers and helpers employed at the Employer's San Jose, California, facility; excluding all other employees, guards, and supervisors as defined in the Act.

There are approximately 36 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.⁷ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the

⁷ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

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 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 350, 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 of the 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 **July 15, 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, D.C. 20570. The Board in Washington, D.C. must receive this request by July 22, 2002.

DATED AT Oakland, California this 8th day of July , 2002.

Veronica I. Clements
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