

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

**CANAL CARTING, INC., AND
CANAL SANITATION, INC.**

A Single Employer

and

Case No. 29-RC-10043

**LOCAL 813 INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO**

Petitioner

and

**LOCAL 890, LEAGUE OF INTERNATIONAL FEDERATED
EMPLOYEES**

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before James Kearns, a Hearing Officers 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, the undersigned finds:

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

2(a). The parties stipulated that Canal Carting, Inc., herein called Carting, is a New York State corporation with its principal office and place of business located at 39 Ferris Street, Brooklyn, New York, herein called its Brooklyn facility. Carting is engaged in the business of waste removal from various commercial enterprises. During

the past year, which period is representative of its annual operations generally, Carting, in the course and conduct of its business operations, purchased and received at its Brooklyn facility, goods valued in excess of \$50,000 directly from points located outside the State of New York.

2(b). The parties stipulated that Canal Sanitation, Inc., herein called Sanitation, is a domestic corporation with its principal office and place of business located at 39 Ferris Street, Brooklyn, New York, herein called its Brooklyn facility.¹ Sanitation is engaged in the business of removal of solid waste and recyclables from various commercial enterprises. During the past year, which period is representative of its annual operations generally, Sanitation, in the course and conduct of its business operations, purchased and received at its Brooklyn facility, goods valued in excess of \$50,000 directly from points located outside the State of New York.

2(c). Based on the stipulations of the parties, and on the record as a whole, I find that Carting and Sanitation, herein collectively called the Employer, are 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 labor organizations involved herein claim 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 Sections 2(6) and (7) of the Act.

¹ Sanitation has an additional facility located at 99 Chappell Street, Newark, New Jersey (herein “the Newark location”). The record does not reflect who works at the Newark location, or what work is performed there.

5. Local 813, International Brotherhood of Teamsters, AFL-CIO, herein called the Petitioner or Local 813, seeks to represent the following unit of employees employed at both Carting and Sanitation:

All full-time and regular part-time chauffeurs, helpers, mechanics, welders, utility, laborers and truck washers, exclusive of all other employees, guards, managers and supervisors as defined in the Act.²

Currently, Local 813 is representing a portion of the petitioned-for unit: the chauffeurs employed by Carting. The Employer takes the position that the instant petition is barred by the current contract between Sanitation and Local 890, League of International Federated Employees, herein called the Intervenor or Local 890, covering a unit of drivers, helpers, mechanics, welders, utility and laborers, at Sanitation's Brooklyn and Newark locations. Further, the Employer takes the position that the unit sought by the Petitioner is inappropriate because Carting and Sanitation are separate employers, whose employees have historically been in separate bargaining units. The position of Local 890 is essentially the same as that of the Employer. Local 813 takes the position that Carting and Sanitation are a single employer, that the current Local 890 unit is inappropriate, and that the petitioned-for unit is appropriate. For the reasons set forth in detail below, I find that the instant record supports Local 813's position with regard to the single employer, contract bar and unit issues.

The sole witness at the hearing was Denise Marrone, bookkeeper for Carting and Sanitation. The Petitioner and Intervenor did not call witnesses.

SINGLE EMPLOYER

A single employer relationship exists "where two nominally separate entities are actually part of a single integrated enterprise so that, for all purposes, there is in fact only

² The petitioned-for unit appears as amended at the hearing.

a ‘single employer.’” *Silver Court Nursing Center*, 313 NLRB 1141, 1142 (1994). A single employer may be treated as one corporation for jurisdictional purposes, e.g., *Pet Inn’s Grooming Shoppe*, 220 NLRB 828 (1975), and the employees of the two companies may be combined in a single bargaining unit. E.g., *Numrich Arms Corporation*, 237 NLRB 313 (1978).

The four operative criteria used to determine whether two separate companies constitute a single employer are: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership. *JMC Transport, Inc.*, 283 NLRB 554, 555(1987). However, no one of these factors is controlling, and it is not necessary for all four of these factors to be present. *JMC*, 283 NLRB at 555; *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979), *enf’d*, 626 F.2d 865 (9th Cir. 1980); *see Jerry’s United Super*, 289 NLRB 125, 135 (1988); *see also Soule Glass and Glazing Co.*, 246 NLRB 792, 795 (1979). Single employer status depends on all the circumstances of the case, and is “characterized as an absence of an arm’s length relationship found among unintegrated companies.” *Silver Court*, 313 NLRB at 1142; *see also Emsing’s Supermarket, Inc.*, 284 NLRB 302, 303, 304 (1987); *Blumenfeld*, 240 NLRB at 215.

The facts adduced in the instant hearing establish that Carting and Sanitation are a single employer.

Common Ownership

The record reflects that Nicholas Infantino and Frank Campo are the shareholders of both Carting and Sanitation.

Centralized Control of Labor Relations

Both principals do the hiring and firing for both companies, and determine which employees to include on which payroll. Frank Campo signed the most recent collective bargaining agreements between Carting and Local 813, and between Sanitation and Local 890, on behalf of both companies. The forms for workers' compensation and unemployment insurance for the two companies can be signed by either principal on behalf of either company.

Centralized Management

Marrone testified that Campo is the President of both Carting and Sanitation. Infantino is the Secretary-Treasurer of both companies. Infantino and Campo are the only supervisors and managers for the two companies.

Interrelation of Operations

Both Carting and Sanitation are engaged in the business of rubbish removal and recycling. Marrone testified that each company holds a separate license to perform work in the five boroughs, issued by the Trade Waste Commission, now called the Business Integrity Commission ("BIC"). In addition, Sanitation is licensed to perform work in New Jersey. Marrone maintained that Sanitation performs work in Queens, Brooklyn, the Bronx, Staten Island and New Jersey, whereas Carting handles Manhattan work only. However, Marrone also stated that Sanitation handles some recycling work in Manhattan.

A business card purporting to be that of Joseph Della Rocca, Senior Account Executive of both Carting and Sanitation, was received into evidence as Petitioner's Exhibit 1. This business card indicates that Carting and Sanitation operate under shared licenses, and that both companies service both New York and New Jersey. Marrone

claimed that Petitioner's Exhibit 1 is an "old card," but did not further elaborate. She conceded that the Employer issues business cards to employees.

Common Location

Both companies operate out of the facility located at 39 Ferris Street, Brooklyn, New York ("the Brooklyn facility"),³ consisting of a garage, where both companies' vehicles are maintained and repaired; a yard next to the garage where both companies' vehicles are parked, and where some maintenance work is done; and an office on the second floor. The Brooklyn facility is owned by BNF Realty, which is owned, in turn, by the principals of Carting and Sanitation: Nicholas Infantino and Frank Campo. Carting and Sanitation pay rent to BNF Realty.

Shared Personnel

The two companies use the professional services of the same attorney, and employ the same bookkeeper. Two full-time clerical workers perform work for both Carting and Sanitation. The vehicles owned by the two companies are repaired by the same two mechanics, and washed by the same truck washer. In addition, the record indicates that helpers employed by Sanitation may be working for both companies: although some of Carting's regular garbage routes require helpers, Marrone testified that she does not know whether Carting has any helpers on its payroll.

Marrone testified that the two companies have separate sales teams, both of which are directed by Campo. As stated above, however, the business card of Joseph Della Rocca, Account Executive, indicates that this individual works for both Carting and Sanitation.

³ As indicated above, Sanitation has an additional facility located at 99 Chappell Street, Newark, New Jersey (herein "the Newark location"). Marrone testified that she does not know who works at the Newark location, or what work is performed there.

Trucks

Marrone testified that Carting owns approximately seven trucks, and Sanitation owns about thirteen trucks. Although the trucks owned by the two companies are the same or substantially similar, Carting employees never use Sanitation trucks, according to Marrone. Also, although the trucks from the two companies fuel up from the same pump at the Brooklyn facility, the fuel company issues separate bills for Carting and Sanitation. The names of the respective companies are painted on the sides of these vehicles.

Other Equipment and Supplies

Sanitation and Carting share the same fax machine. According to Marrone, they have different telephone numbers,⁴ but the office clerical employees answer the telephone for both companies. Supplies are sometimes purchased separately for the two companies. However, Marrone conceded that sometimes one company is billed for supplies used by both.

Separate Finances

Sanitation and Carting have separate checking accounts and separate insurance policies, and pay separate Social Security, unemployment insurance, and income taxes. There is no exchange of money between the two companies.

Conclusion

The hearing established that Carting and Sanitation operate out of a shared facility, sharing many of the same personnel, under identical ownership and management. The two owners are also the officers, managers and supervisors of the two companies, and are both in charge of labor relations for the two companies. Accordingly, based on

⁴ Petitioner's Exhibit 1 provides one "800" number for the two companies.

all the relevant factors, I conclude that Carting and Sanitation, herein collectively called the Employer, are a single employer.

CONTRACT BAR / UNIT ISSUE

For an existing collective-bargaining agreement to bar a representation petition, it must encompass an appropriate unit. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1164 (1958); *see Seton Medical Center*, 317 NLRB 87 (1995); *Moveable Partitions, Inc.*, 175 NLRB 915 (1969)(contracts encompassing only employees working in Westchester and Suffolk counties lacked bar quality); *see also United Health Care Services, Inc.*, 326 NLRB 1379, 1380 (1998).⁵ The party or parties asserting that a contract is a bar to an election bear the burden of proof. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517, 518 (1970); *Bo-Low Lamp Corporation*, 111 NLRB 505, 508 (1955).

The unit for bargaining need not be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950)(emphasis in original), *enf’d on other grounds*, 190 F.2d 576 (7th Cir. 1951). The finding that two companies constitute a single employer “does not necessarily establish that the employerwide unit is the appropriate bargaining unit...in determining the scope of the unit, we are concerned with the community of interest of the employees involved.” *Peter Kiewit Sons’ Co. and South Prairie Construction Co.*, 231 NLRB 76 (1977), *enf’d*, 595 F.2d 844 (D.C. Cir. 1979).

⁵ The Intervenor cites *Red Coats, Inc.*, 328 NLRB 205 (1999), which held that the Respondent Employer was equitably estopped from challenging the appropriateness of the units it agreed to when it extended voluntary recognition. This case is inapposite. *Red Coats, Inc.*, did not overrule the 45 years of Board law holding that a contract, to be accorded bar quality, must embrace an appropriate unit.

The community of interest criteria applied by the Board in making unit determinations include “distinctions in skills and functions of particular employee groups, their separate supervision, the employer’s organizational structure and differences in wages and hours, as well as integration of operations, and employee transfers, interchange and contacts.” *Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984); *see also Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Additional relevant factors include fringe benefits and other working conditions, work location, degree of centralized control over the employer’s day-to-day operations and personnel policies, and previous bargaining history (or lack thereof) at the Employer. *See J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Transerv Systems, Inc.*, 311 NLRB 766 (1993); *Allied Gear and Machine Company, Inc.*, 250 NLRB 679 (1980). By weighing these various factors, the Board evaluates whether the employees in the proposed unit “share a sufficiently distinct community of interest from other employees as to warrant a separate unit,” *Transerv*, 311 NLRB at 766, or conversely, whether other employees share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required. *J.C. Penney*, 328 NLRB at 766. “It is well established that the Board does not approve fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational basis.” *Seaboard Marine*, 327 NLRB at 556 (citing *Colorado National Bank of Denver*, 204 NLRB 243 (1973)).

The evidence adduced in the instant hearing revealed that the petitioned-for unit currently consists of the following:

<u>JOB CLASSIFICATION</u>	<u>CARTING</u>	<u>SANITATION</u>
Roll-Off Drivers	3	2 or 3
Drivers with regular garbage routes	3	About 10
Helpers	Unknown ⁶	10
Mechanics	None	2
Truck washers	None	1
Welders, utility & laborers	None	None

Skills and Functions

Drivers

The drivers employed by Carting and Sanitation have identical job skills, functions and qualifications.⁷ The roll-off drivers for both companies operate roll-off trucks to transport containers of construction debris and garbage to disposal facilities. The drivers of regular routes for both companies pick up garbage and recyclables from commercial enterprises. The drivers for both companies must have CDL licenses, relevant experience and good driving records.

Helpers

Marrone testified that all helpers have the same job qualifications. They work with drivers on regular garbage routes.

⁶ Marrone testified that she does not know whether or not Carting employs any helpers.

⁷ Years ago, a number of Sanitation drivers were trained to handle hazardous materials. This type of work is no longer performed by Sanitation.

Mechanics

The mechanics repair the vehicles owned by both Carting and Sanitation. Marrone was unfamiliar with their job qualifications.

Truck Washer

The truck washer's sole function is to wash the vehicles owned by both companies.

Supervision

Marrone testified that all employees in the petitioned-for unit report to the Employer's two principals. Infantino supervises and dispatches the roll-off drivers for both Carting and Sanitation. The mechanics are supervised by both principals. The record does not indicate which of the two principals supervises the truck washer, the helpers or the drivers of regular garbage routes.

Interchange and contacts among employees

Marrone did not have any direct knowledge of the degree of interchange or contacts among employees. However, the record reveals that the mechanics repair the vehicles driven by the Employer's drivers, and the truck washer washes those vehicles. The function of the Employer's helpers is to work with drivers on regular garbage routes. As indicated above, the helpers employed by Sanitation may work with Carting's drivers.⁸

Working Conditions

Marrone testified that the drivers employed by Carting and Sanitation punch the same time clock. A second time clock is punched by all the "guys in the garage."

⁸Marrone does not know whether Carting employs any helpers, but she testified that there are helpers working on some of Carting's regular garbage routes.

Previous bargaining history

Carting

The parties stipulated that since the 1970s or earlier, Local 813 has represented Carting's drivers. The most recent collective bargaining agreement between Local 813 and Carting was effective from December 1, 1999, through November 30, 2002. Marrone testified that Carting is continuing to pay the contractual wages and fund contributions.

Sanitation

The record reflects that from about mid-1996 until mid-2000, Sanitation's drivers were represented by Waste Material Union Local 958 (Local 958). For most of this period, starting sometime in the latter half of 1997, the Local 958 unit consisted of just one driver, Stanislaw Jablonski. Jablonski was laid off on or about June 1, 2000, leaving no drivers in the Local 958 unit and four drivers in the Local 813 unit.

On November 1, 2001, Sanitation signed a collective bargaining agreement with the Intervenor, covering a much broader unit of drivers, helpers, mechanics, welders, utility and laborers, at its Brooklyn and Newark locations, excluding all guards, office clerical and supervisory employees. Marrone testified that Sanitation is adhering to its contract with the Intervenor.

Conclusion

The evidence adduced at the hearing demonstrates that the employees of Carting and Sanitation report to the same work location and punch the same time clocks. The drivers and helpers employed by the two companies have the same skills, functions and

qualifications. The mechanics and truck washer are on the Sanitation payroll, but they perform identical functions for both Carting and Sanitation.

With regard to supervision, all of the employees in the petitioned-for unit report to one or both of the same two individuals. The roll-off drivers of both companies are under the shared supervision of one of the Employer's principals. The mechanics are supervised by both principals, and thus their supervision overlaps with that of the roll-off drivers. Further, the helpers work with the drivers of regular garbage routes, and the mechanics and truck washer repair and wash the drivers' vehicles. *See Great Western Produce Inc.*, 839 F.2d 555, 560 (1988) (mechanics had community of interest with drivers and warehousemen, "most importantly...since they repair the drivers' trucks and the warehousemen's forklifts"); *Indiana Refrigerator Lines, Inc.*, 157 NLRB 539, 550-51 (1966)(despite lack of interchange, mechanics and garage employees were properly included in a unit of drivers). Lastly, the two companies' ownership, management and labor relations functions are centralized.⁹

For these reasons, I find that the petitioned-for unit is appropriate, and that the employees in the current contractual unit represented by Local 890 do not share a sufficiently distinct community of interest to warrant a separate bargaining unit. To the contrary, the employees represented by Local 890 do not constitute an appropriate bargaining unit. The performance of work in Manhattan is not a valid basis for placing Carting drivers in a separate bargaining unit, nor is the past separation of the drivers into two bargaining units (with Local 813 representing all but one of the Employer's drivers). And since the mechanics and truck washer perform work for both Carting and Sanitation, their assignment to the Sanitation payroll, and hence the Local 890 unit, is arbitrary.

⁹ *See supra* p. 4-5.

Since the current collective bargaining agreement between Local 890 and Sanitation does not encompass an appropriate bargaining unit, I further find that it does not bar the instant petition. I find the following bargaining unit to be appropriate for the purposes of collective bargaining:

All full-time and regular part-time chauffeurs, helpers, mechanics, welders, utility, laborers and truck washers, exclusive of all other employees, guards, managers and supervisors as defined in the Act.

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 employees 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. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or 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 they desire to be represented for collective bargaining purposes by Local 813, International Brotherhood of Teamsters, AFL-CIO, by Local 890, League of International Federated Employees, or by neither labor organization.

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 the 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, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before July 2, 2003. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

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 July 9, 2003.

Dated at Brooklyn, New York, June 25, 2003.

Alvin Blyer
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