

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

STERICYCLE, INC.

Employer¹

and

Case 14-RC-12823

AUTOMOTIVE, PETROLEUM, ALLIED INDUSTRIES
AND AIRLINE EMPLOYEES UNION, LOCAL 618,
affiliated with INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner²

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Stericycle, Inc., is engaged in the business of collecting, processing, and disposing of medical waste. The Petitioner, Automotive, Petroleum, Allied Industries and Airline Employees Union, Local 618, affiliated with International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board under Section 9(a) of the National Labor Relations Act seeking to represent a unit of all plant workers and maintenance employees. A hearing officer of the Board held a hearing, and the Employer filed a brief with me, which I have carefully considered.

As evidenced at hearing and in the brief, there are two issues: (1) whether the Petitioner is a labor organization as defined in Section 2(5) of the Act, and (2) whether the unit sought by the Petitioner is appropriate.³ The Petitioner seeks to represent a bargaining unit of 32 plant workers and one maintenance employee at the Employer's St. Louis, Missouri facility. The Employer contends that the appropriate unit includes, in

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

² The Petitioner's name appears as amended at hearing.

³ The Employer's motion to dismiss is considered under Conclusions and Findings.

addition to the plant workers and maintenance employee, 21 drivers, 14 in-service technicians, and 3 administrative employees. As discussed more fully below, I find that the Petitioner is a labor organization as defined in Section 2(5) of the Act and that the petitioned-for unit of plant workers and maintenance employees is an appropriate bargaining unit.

I. LABOR ORGANIZATION STATUS

The Petitioner is a local union chartered by the International Brotherhood of Teamsters. At hearing, a witness for the Petitioner testified that the Petitioner negotiates collective-bargaining agreements with various employers and employees participate in the organization by attending monthly meetings and voting in internal union elections. The witness further testified that the Petitioner exists, at least in part, for the purpose of dealing with employers concerning employees' terms and conditions of employment including grievances, labor disputes, wages, and rates of pay.

Section 2(5) of the Act states: "The term 'labor organization' means any organization of any kind, or an agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." The Petitioner clearly qualifies as a labor organization within the meaning of Section 2(5) of the Act. *Litton Business Systems*, 199 NLRB 354 (1972); *Grand Lodge Int'l Association of Machinists*, 159 NLRB 137 (1966); *Alto Plastics Manufacturing Corp.*, 136 NLRB 850, 851-852 (1962).

II. OVERVIEW OF OPERATIONS

The Employer collects, processes, and disposes of medical waste at its facility in St. Louis, Missouri. The facility consists of an office area, warehouse, and treatment plant where two kinds of medical waste are processed: Regulated Medical Waste (RMW) and Sharps Management Service, also referred to as Bio System Waste (SMS or Sharps). The waste is collected from various customers, such as hospitals, doctor

offices, dentist offices, veterinary practices, dialysis centers, plasma centers, tattoo parlors, blood banks, and other medical-related facilities. The waste is then transported to the facility, processed, and disposed of. The Employer tracks and records the waste to ensure compliance with regulatory waste disposal requirements.

Catherine Walker is the St. Louis facility manager. She is responsible for overseeing the day-to-day operations of the facility and supervises the three administrative employees. Christian Paul is the health and safety manager. Michael Pressley, the transportation supervisor, supervises the 14 drivers. The maintenance supervisor, David Moran, supervises the maintenance employee and Dion Devres, a newly hired plant supervisor, will supervise some of the 32 plant workers. Paul, Pressley, Moran, and Devres report to the facility manager. Another plant supervisor position, similar to Devres', was offered to an applicant who had not accepted the position as of the date of the hearing. Cathy Kohler Schwartz, the regional operations manager who is currently working out of the St. Louis facility, directly supervises the 14 in-service technicians. Schwartz will be relocating shortly, and the technicians will be supervised by Bowden Holloway, who is transferring to the Employer's facility from the Kansas City, Missouri office.⁴

The sales people, whom no party contends are appropriately included in the unit, contact customers and determine their waste collection needs. This information is input into the Employer's Bio Track system, which calculates the number of waste collection containers the customer needs, the size of the containers, and the frequency of collection. The Bio Track administrator, who is one of the administrative employees,

⁴ The parties stipulated that Paul, Pressley, Moran, Devres, and Schwartz are supervisors within the meaning of Section 2(11) of the Act. The parties did not stipulate to the supervisory status of the facility manager or the health and safety manager, but no party contends that either is appropriately included in the unit. Further, no party contends that Holloway or any other plant supervisor is appropriately included in the unit.

creates a manifest or schedule for the transportation supervisor, who then determines the routes for the drivers.

The Employer dispatches trucks from its facility to collect medical waste from its various customer locations. In the evening or early morning hours, plant workers load trucks with empty waste collection containers so the drivers can promptly start their routes in the morning. The drivers deliver empty containers and provide labels for its customers to package and label their medical waste products. Upon collecting full containers of waste at a customer's location, the driver scans the bar code on the waste containers. The drivers transport the waste back to the Employer's facility where it is treated and processed for disposal in landfills. Upon arrival at the facility, the drivers back their truck into a vacant dock door for unloading by the plant workers. If no dock is available, the drivers park their truck for unloading at a later time. The drivers then take their manifests to the transportation supervisor for debriefing. Some drivers will take another truck out and deliver empty containers and return with full waste containers. At the end of a shift, drivers leave the facility while their trucks are being unloaded although, at times, drivers will assist the plant workers in unloading their trucks. One driver works a later shift so that he has contact with the second shift plant workers when they unload and load his route truck. While on their routes, drivers may receive requests from customers for a change in the schedule delivery dates and times or additional containers. The drivers report these requests to the transportation supervisor or an administrative employee.

The drivers' hours vary depending on their customer needs and the distance to the customer locations. Drivers' shifts start as early as 3 a.m. and as late as 11 a.m., and they work between 35 and 38 hours per week. Drivers are paid a day rate regardless of the number of hours they actually work, but the record does not reflect the day rate. One driver is a flex driver and if another driver is ill or absent, the flex driver fills in on the absent driver's route. On one occasion when a driver was injured and

unable to perform all of his duties, the Employer assigned a plant worker to ride with the driver to assist. Drivers wear Employer-provided uniforms of blue pants and green polo shirts. Drivers are not required to have a CDL license unless they are long-haul drivers.

A plant supervisor is assigned to each of the two waste processing operations. Plant workers are assigned to one of four crews, two day shift and two evening shift. Each crew has a lead person. On the RMW process, the day shift plant workers work 4 10-hour days, from 5 a.m. to 3 p.m. with a rotating day off over a 6-week cycle. The RMW evening shift workers work 5 8-hour days, from 3 a.m. to 11:30 a.m. On the SMS process, the day shift plant workers also work 4 10-hour days, but from 6:30 a.m. to 5 p.m. with preset days off. The SMS day shift hours were to change on May 2, 2011 to 5 8-hour days, from 7:30 a.m. to 4 p.m. The SMS evening shift plant workers work 4 10-hour days from 6 p.m. to 4:30 a.m. but this too was to change to 5 8-hour days, from 5 p.m. to 1:30 a.m. Plant workers punch a time clock and are paid an hourly rate, but the record is silent as to the wage rate. All plant workers wear uniforms of gray pants and gray long or short-sleeved oxford shirts or green polo shirts, which are provided by the Employer.

The plant workers perform various tasks in the RMW treatment process. RMW waste is referred to as "red bag waste", which is clothing and other types of medical materials such as bandages that are blood soaked. Plant workers unload the containers of waste from the trucks that arrive at the facility's loading docks. On occasion, when a driver cannot immediately back a truck up to a dock, a plant worker drives the truck from the parking lot to an open dock. The plant workers scan and weigh the containers of RMW waste for tracking purposes. The containers are then placed on a conveyor belt that transports them to another plant worker who is assigned to oversee the mechanical opening and dumping of the container waste into five large bins or vessels. When the bins are full, they are transported on the conveyor belt into the autoclave, which is a giant pressure cooker that heats to 325 degrees and cooks for

30 minutes, decontaminating the waste. After the cooking process ends, a plant worker releases the pressurized door and the waste bins move by conveyor to another plant worker who uses a mechanized lift system to dump the treated waste into a compactor that compresses the material. When the compactor is full, which occurs about every 3 hours, a driver or plant worker puts the compactor bins on a flat bed truck and the waste is hauled to a landfill.

While the waste is being treated and compacted, other plant workers take the emptied containers by conveyor for pre-washing and washing, and then snap the lids back on the containers. After cleaning and inspecting the containers for cleanliness and usability, plant workers place the clean containers on carts for loading onto trucks for delivery to customers. Containers not needed for customers are stored for future use.

On the SMS or Sharps treatment process, plant workers perform similar duties of unloading and processing carts of containers full of sharps. SMS waste consists of sharp medical waste products, typically needles. Like the RMW process, plant workers oversee the transfer of the sharps waste through the process. The SMS containers are unloaded from the trucks, scanned, weighed, and put on a conveyor belt where they are opened and the waste material is decontaminated in the autoclave and compacted and disposed of in a landfill. While the waste is being treated, plant workers ensure the containers are emptied, washed, and inspected for cleanliness as well as usability. Those containers passing inspection are loaded onto carts and then trucks for delivery to customers or stored.

The plant workers on both the RMW and SMS waste treatment processes are experienced and knowledgeable in the operations and perform all the different tasks. They rotate tasks and take turns performing different functions.

The parties agree that there is one maintenance employee, whom both parties contend is appropriately included in the unit. The record, however, is silent as to the maintenance employee's duties and other terms and conditions of employment. On

brief, the Employer states the maintenance technician repairs and maintains equipment such as the autoclave and trucks.

In addition to the drivers, plant workers, and maintenance employee, the Employer employs 14 in-service technicians. The in-service technicians' duties include visiting customers such as hospitals and labs, where they go to various floors and units to collect full sharps containers and replace them with empty, clean containers. The in-service technicians meet the drivers at customer locations to exchange racks of full and empty sharps containers. The in-service technicians' hours are based on customers' needs. They may punch the time clock in the plant, but because they are often in the field they also communicate their hours by cell phone. The technicians are hourly paid, but the record does not reflect their wage rate. When an in-service technician is absent, the other technicians fill in for the absent technician. The Employer provides the in-service technicians uniforms of khaki pants and blue polo shirts.

The Employer also employs three administrative employees, referred to as Admin I and Admin II, who work in the Employer's office and fill out load sheets and maintain records of deliveries to customers. The Admin I employee prints and collects the drivers' manifests and audits them for accuracy. The Admin II employees perform customer service and handle billing and accounts payables. One of the Admin II employees also works in the receptionist area of the office and administers the Bio Track system, which is the collection of information downloaded into the system by the sales people and the information scanned by the drivers, in-service technicians, and plant workers as the waste collection containers go through the collection and treatment process. All three administrative employees answer the phones, punch a time clock, and are hourly paid, although the record is silent as to their wages. The Bio Track administrative employee works 5 8-hour days and the other two administrative employees work 4 10-hour days.

All employees, including the sales people, are subject to the same pre-employment hiring requirements and processing, and upon hire are subject to the Employer's employee handbook and code of conduct. All employees receive the same employment benefits including health and life insurance, flexible spending account, 401(k) savings plan, vacation, holidays, and personal days. The Employer annually provides a \$100 shoe allowance to the drivers, in-service technicians, and plant workers, who are required to wear steel-toed shoes. The Employer also provides these employees with protective gear such as safety glasses and gloves appropriate to the type of waste they handle. The plant workers also wear face shields, aprons, and sharp-resistant gloves. The plant workers use a break room in the processing and treatment area that may also be used by the drivers when at the facility. There is also a break room in the office area. All employees are required to have a high school diploma or GED. While there was testimony that some plant workers transferred to driver or in-service technician positions, that testimony was conclusory and without detailed, specific evidence.

III. APPROPRIATE UNIT

It is well settled Board law that a union need not seek to represent the most appropriate unit or most comprehensive unit, but only an appropriate unit. *Overnite Transportation Co.*, 322 NLRB 347, 350 (1996); *Transerv Systems*, 311 NLRB 766 (1993); *P. J. Dick Contracting*, 290 NLRB 150, 151 (1988). The Board's procedure for determining an appropriate unit is to examine first the petitioned-for unit. If that unit is appropriate, the inquiry ends. If the petitioned-for unit is not appropriate, the Board may examine alternative units suggested by the parties, but also has the discretion to select an appropriate unit that is different from those proposed by the parties. *Boeing Co.*, 337 NLRB 152, 153 (2001); *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for

classifications. In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Boeing Co.*, supra; *Bartlett Collins Co.*, supra. The Petitioner's desire as to the unit is a relevant consideration, though not dispositive. *Overnite Transportation Co.*, 322 NLRB at 350, citing *Airco, Inc.*, 273 NLRB 348 (1984); see also *Florida Casino Cruises*, 322 NLRB 857, 858 (1997), citing *Airco*, supra.

The plant workers and the maintenance employee work together in the treatment plant and are supervised by the plant and maintenance supervisors. They share common duties related to the waste treatment process and maintenance of the treatment equipment. They are required to wear uniforms and protective equipment different from the drivers, in-service technicians, and administrative employees due to the unique and hazardous nature of their work in the plant. They are all shift workers, hourly paid, punch the same time clock, share the same break room, and enjoy the same benefits.

While there is some level of functional integration between the collection and transportation of the waste containers by the drivers and in-service technicians, which is then processed and treated by the plant workers on machinery maintained by the maintenance employee, there are very limited similarities in actual job duties. While the drivers may assist in loading and unloading trucks, which are primarily plant worker responsibilities, the record fails to establish that this is a regular occurrence. Both the drivers and plant workers may move trucks around the plant yard and to the docks, but this occurs because the drivers leave after their shift and the plant workers are still working. Also, there is an evening shift of plant workers who have very limited contact with the majority of drivers except for the one driver who works a later shift and that interaction is limited to the docking, loading, and unloading of trucks.

The drivers and in-service technicians spend most of their time away from the plant. The small percentage of their time when the drivers are at the plant, they are dropping off and picking up containers, submitting their paperwork to the transportation supervisor, and picking up manifests from their supervisor or the front office. They spend the remainder of their day on their routes away from the plant. It is not clear how often the in-service technicians are at the plant. Plant workers rarely have any contact with the administrative employees unless requested to assist them in moving heavy objects or in passing at the plant. The drivers, in-service technicians, and administrative employees are all separately supervised. The degree of contact between the plant employees and the drivers, in-service technicians, and administrative employees is insufficient to require the inclusion of these employees in a plant-wide unit.

There has been some transfer of plant workers to driver or in-service technician positions, however, there is no detailed or specific evidence these transfers were frequent or temporary. The record indicates there was one occasion when a plant worker assisted an injured driver with lifting, unloading, and delivering containers. Typically, both the drivers and in-service technicians rely on other employees in their classification to cover for absences. This degree of transfer and interchange between the plant and non-plant employees is de minimis. In addition, there is no evidence that the transfers were involuntary or temporary, rather than permanent, which the Board considers less significant. *Red Lobster*, 300 NLRB 908, 911 (1990).

The functional integration, minimal contact, and limited interchange of employees is outweighed by the other factors that support the appropriateness of a unit limited to the plant workers and maintenance employees. The nature of the plant employees' duties is completely different from that of the drivers, in-service technicians, and administrative employees. Plant workers process hazardous materials using heavy machinery maintained by the maintenance employee. This work is very different in nature from drivers and in-service technicians who service customers at their locations

and the clerical duties of the administrative employees. Due to the nature of their work, there are differences between the plant employees and the non-plant employees with respect to their skills and working conditions. Thus, only plant workers process the waste materials that require them to wear special face shields and aprons. The plant workers and non-plant workers also work different work schedules. The plant workers work two shifts and the other classifications have one shift and the drivers and in-service technicians have individualized start times. The plant workers are hourly employees while the drivers earn a day rate. In addition, the plant workers and maintenance employee have separate direct supervision from the drivers, in-service technicians, and administrative employees. Accordingly, based on the record evidence, I find that the petitioned-for unit limited to plant workers and maintenance employees is appropriate. *Maramount Corp.*, 310 NLRB 508, 512 (1993) (a production and maintenance unit is a classic appropriate unit).

IV. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at hearing are free from prejudicial error and are hereby affirmed.⁵
2. The Employer is engaged in commerce with the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here.
3. The Petitioner claims to represent certain employees of the Employer.

⁵ At hearing, the Petitioner orally requested to revoke the Employer's Subpoenas Duces Tecum on the basis that the witnesses and documentation were irrelevant and overbroad. The hearing officer reserved judgment on the petition to revoke and neither party raised the issue prior to the close of the hearing or on brief. As I have found the record sufficient to make a determination, and in the absence of any request for a ruling, I find these issues moot.

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.⁶

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:

All full-time and regular part-time plant workers and maintenance employees employed by the Employer at its facility located in St. Louis, Missouri excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees in this unit will vote on whether or not they wish to be represented for purposes of collective bargaining by Automotive, Petroleum, Allied Industries and Airline Employees Union, Local 618, affiliated with International Brotherhood of Teamsters. The date, time, and place of the election will be specified in the Notice of Election that the Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees

⁶ At hearing, the Employer filed a motion to dismiss the petition for lack of jurisdiction. On brief, the Employer contends the Petitioner failed to indicate the petition was supported by 30 percent or more of the employees in the unit and failed to establish at hearing that it had a sufficient showing of interest to raise a question concerning representation. Prior to setting this matter for hearing, I determined that the showing of interest, which is purely an administrative matter and a nonlitigable issue, was adequate and there was reasonable cause to believe that a question of representation affecting commerce exists. National Labor Relations Act, 29 U.S.C. Section 159(c)(1)(B); NLRB Casehandling Manual (Part Two) Representation Proceedings, Sections 11020-11021. Accordingly, the Employer's motion to dismiss is denied.

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 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 may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

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 to 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).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters in the unit. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **May 13, 2011**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office. To file the eligibility list electronically, go to the Agency's website at www.nlrb.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 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.

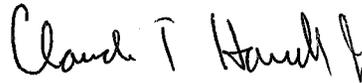
VI. RIGHT TO REQUEST REVIEW

Under the provision 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. 20570-0001. This request must be received by the Board in Washington by **May 20, 2011**.

The request may be filed electronically through the Agency's website, www.nlr.gov,⁷ but may not be filed by facsimile.

Dated: May 6, 2011

at: Saint Louis, Missouri



Claude T. Harrell Jr., Regional Director
National Labor Relations Board
Region 14
1222 Spruce Street, Room 8.302
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⁷ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.