

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

AMERICAN RECLAMATION, INC.
Employer

and

Case No. 31-RC-066361

PACKAGE AND GENERAL UTILITY DRIVERS,
TEAMSTERS LOCAL UNION NO. 396
Petitioner

DECISION AND DIRECTION OF ELECTION

On October 7, 2011, Package and General Utility Drivers, Teamsters Local Union No. 396 (Local 396 or Union) filed petition 31-RC-066631 under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent a unit of drivers, helpers, sorters, mechanics and general labor employees employed by American Reclamation, Inc. (Employer) as fully set forth in Section IV below.

On October 24, 2011, a hearing was held on the referenced petition. The sole issue presented at the hearing was whether the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the National Labor Relations Act (Act) and subject to the jurisdiction of the National Labor Relations Board (Board).

For the reasons set forth in Section V below, I conclude that American Reclamation is an employer engaged in commerce within the meaning of Section 2 (2), (6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction in this matter.

I. HEARING OFFICER RULINGS: The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

II. LABOR ORGANIZATION: The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

III. QUESTION CONCERNING COMMERCE: A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

IV. APPROPRIATE UNIT: 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:¹

INCLUDED: All regular full-time and part-time drivers, helpers, sorters, mechanics and general labor employees employed by the Employer at its facilities located at 4560 Doran Street and 5487 West San Fernando Road in Los Angeles, California 90039.

EXCLUDED: All other employees, all office employees, supervisors, salespersons, professional employees and guards as excluded in the Act as amended.

V. JURISDICTION: The Employer, through counsel, stipulated to the following facts concerning commerce:

The Employer is a California corporation with a place of business located in Los Angeles, California where it is engaged in providing rubbish hauling and recycling services. Within the past 12 months, a representative period, the Employer has performed services valued in excess of \$50,000

¹ The Employer does not dispute, and I hereby find, that the petitioned-for unit is an appropriate unit.

for customers located within the State of California, including but not limited to Metropolitan Transit Authority, Montebello School District, Smart & Final, and Mount San Antonio Community College. Those customers meet the Board's direct jurisdictional standards.

[Board Exhibit 4].

Specifically, the Employer has a five year contract with the Montebello School District for which the Employer is paid approximately \$38,000 per month. The Employer also has a contract with the Metropolitan Transit Authority for which the Employer is paid approximately \$100,000 per month. The Employer is paid approximately \$7,000 for services it provides to Mount San Antonio College. The Employer provides services to more than 20 Smart & Final stores. Finally, the Employer is paid approximately \$380,000 per month by individual businesses pursuant to its contract with the City of El Monte.

The Board has long asserted jurisdiction where there is an annual outflow or inflow of goods or services, direct *or indirect*, across state lines of at least \$50,000. *Siemons Mailing Services*, 122 NLRB 81, 85 (1959). “*Indirect outflow* refers to sales of goods or services to users meeting any of the Board's jurisdictional standards except the indirect outflow or indirect inflow standard.” *Id.* (original emphasis). Where jurisdiction is asserted on these grounds, the customers who receive the goods or services must satisfy the Board's direct jurisdictional standards. *Id.* In the instant case, the Employer admitted to facts that satisfy the indirect outflow standard for asserting jurisdiction. Moreover, the Employer's President further substantiated these facts when he clarified the amounts paid for the Employer's services by various entities that admittedly satisfy the Board's direct jurisdictional standards. The Employer's argument that the Board does not have jurisdiction because there is no direct inflow or outflow of goods or services ignores this well-established indirect outflow standard.

The Board has recently asserted jurisdiction in similar cases. In *Local 79, Laborers International Union of North America, AFL-CIO (JMH Development)*, 354

NLRB No. 14, slip op. at 4 (2009), the Board asserted jurisdiction over an employer based on the fact that it had derived revenue in excess of \$50,000 for providing in-state demolition services to a company that met the Board's direct jurisdictional standards. Similarly, the Board asserted jurisdiction based on indirect outflow in *Artesia Ready Mix Concrete, Inc.*, 339 NLRB 1224, 1224 (2003). Jurisdiction there was asserted on the basis that a California company had provided goods valued in excess of \$50,000 directly to customers or business enterprises inside the State of California who themselves met one of the Board's direct jurisdictional standards.

Given the Employers' admission of the underlying facts that establish that it is an employer engaged in commerce within the meaning of Section 2 (2), (6) and (7) of the Act, its failure to agree to the legal conclusion does not preclude the Board from asserting jurisdiction based on the facts admitted by the Employer in Board Exhibit 4. *See George Washington University*, 346 NLRB 155, 158 n.7 (2005) (jurisdiction asserted based on respondent's admission of commerce facts despite respondent's denial of the conclusory allegations that respondent was an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act).

VI. CONCLUSION: On the basis of the foregoing and the record as a whole, I find that American Reclamation, Inc. is an employer within the meaning of Section 2(2) of the Act and that it would effectuate the policies of the Act to assert jurisdiction herein.

Accordingly, I shall direct an election in the following appropriate unit (hereinafter "Unit"):

INCLUDED: All regular full-time and part-time drivers, helpers, sorters, mechanics and general labor employees employed by the Employer at its facilities located at 4560 Doran Street and 5487 West San Fernando Road in Los Angeles, California 90039.

EXCLUDED: All other employees, all office employees, supervisors, salespersons, professional employees and guards as excluded in the Act as amended.

There are approximately 57 employees in the Unit found appropriate.

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 will vote whether or not they wish to be represented for purposes of collective bargaining by **Package and General Utility Drivers, Teamsters Local Union No. 396**. The date, time, and place of the election will be specified in the notice of election that the Board's 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 before 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. Unit employees 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. *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.). This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 31 Regional Office, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064-1824, on or before **November 15, 2011**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this 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 to the Regional office by electronic filing through the Agency's website, www.nlr.gov,² by mail, or by facsimile transmission at (310) 235-7420. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party. 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 or e-mail, in which

² To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select *File Case Documents*, enter the NLRB Case Number, and follow the detailed instructions.

case no copies need be submitted. If you have any questions, please contact the Regional Office.

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 working days prior to 12:01 a.m. of the day 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 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **November 22, 2011**. The request may be filed electronically through the Agency's web site, www.nlr.gov,³ but may not be filed by facsimile.

DATED at Los Angeles, California this 8th day of November, 2011.



Mori Rubin, Acting Regional Director
National Labor Relations Board
Region 31

³ To file the request for review electronically, go to the Agency's website at www.nlr.gov, select *File Case Documents*, enter the NLRB Case Number, and follow the detailed instructions.