

**THE UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

STERICYCLE, INC. and STERICYCLE
OF WASHINGTON, INC., as a “Single
Employer,”

Case No. 19-RC-88671

Employer,

and

TEAMSTERS, LOCAL 174,

Petitioner.

REQUEST FOR REVIEW

COMES NOW the above-named Employer and hereby requests review of the Decision & Direction of Election (“DDE”) by the Regional Director of Region 19, issued on October 17, 2012.

INTRODUCTION

A. The Need for Review

The Regional Director in the October 17 DDE approved the petitioned-for unit. This decision is in error in that it approves a “fractured” unit – *i.e.*, a unit constituting of an “arbitrary segment of what would be an appropriate unit.” *Oldwalla, Inc.*, 357 NLRB no. 132, *slip op. at 5 (2011)*, and *Specialty Health Care*, 357 NLRB no. 83 (2011). The Board should review the DDE because the Regional Director’s decisions on “substantial factual issue[s] [are] clearly erroneous on the record and such error[s] prejudicially affect[] the rights of the parties.” *Rules & Regulations*, section 102.67(c)(2).

B. Overview: The Regional Director Erred in Concluding the Single-Facility Presumption Was Not Overcome.

The Employer is a medical waste company with operations throughout the United States. At issue in this proceeding are its operations in the Pacific Northwest. The petitioned-for unit consists of only the route drivers operating out of a single facility in Kent, Washington (plus one warehouseman and one long-haul driver, both based in Kent). This unit would exclude other route drivers and long-haul drivers at other Pacific Northwest locations, as well as medical waste plant workers in Morton, Washington and Butte, Montana, and customer-directed technicians based in hospitals and other customer locations in the Pacific Northwest.

The Regional Director did not approve the broader district-wide unit proposed by the Employer in its post-hearing brief. The Employer does not challenge, however, that aspect of the Regional Director's decision.

Instead, as will be shown below, the only appropriate unit encompassing the petitioned-for unit must include also the other route drivers in Washington state, all of whom report up to Kent-based Transportation Supervisor Mike Lewis – *i.e.*, route drivers in Woodinville (4), Spokane (4), and Pasco (1) (hereinafter, the “Washington Drivers” unit). It would in addition be appropriate to include the drivers in the two Montana locations, who also report up to Mike Lewis (four long-haul drivers in Butte, and one route driver in Billings) (hereinafter, the “Washington/Montana Drivers” unit).

As will also be shown below, the only appropriate unit should also include the three dispatchers in Kent, who work with and interact daily with all drivers in the

Washington/Montana Drivers unit (the “Washington/Montana & Dispatchers” unit). In fact, in another RC case in 2008 involving this same Employer – Stericycle, case no. 32-RC-5603 – the Regional Director in Region 32 found correctly that a “petitioned-for unit of drivers only is not appropriate insofar as it fails to include” the very same dispatcher classification at issue in this present RC case. [id., p. 2].

The fact that neither the Employer nor the Union, at the RC hearing stage, proposed the Washington/Montana Drivers & Dispatchers unit is not an impediment to the Board making its own determination. Boeing Co., 337 NLRB 152, 153 (2001) (the Board may select an appropriate unit that is different from the alternative proposals of the parties).

In settling on the petitioned-for unit, the Regional Director concluded that the presumption in favor of a single-facility unit was not overcome. He is in error. The five factors relied upon by the Board in determining whether the presumption is overcome, are as follows:

1. Degree of control over daily operations and labor relations; as noted by the Regional Director at page 18 of the DDE, this factor “compares the autonomy of local supervision.”¹
2. Similarities in employee functions, skills and working conditions.
3. Presence of employee interchange or contact.
4. Bargaining history.

¹ The Regional Director also stated, as page 18: “Frequently, this is a question of whether front line supervisors have discretion to address employee problems, grant requests for time off, issue verbal discipline, participate in the hiring process, or whether the decisions regarding these matters are controlled by upper management.”

5. Distance between facilities.

Trane, 339 NLRB 866 (2003); Alamo Rent-a-Car, 330 NLRB 897 (2000).

There is no authority for the proposition that all five factors must be met to the same comprehensive degree (plus, bargaining history is a non-factor in the absence of any bargaining history²). Instead, what must be shown under the unique circumstances of each case is that, overall, the proposed single-facility unit – as the Regional Director correctly summarized – “has been so integrated with the employees in another facility (or facilities) as to cause the single facility unit to lose its separate identity.” [DDE, p. 17, citing to Trane, *supra*, and New Britton Transportation, 330 NLRB 397 (1999)].

As will be shown in greater detail below, a unit consisting of only Kent-based route drivers is inappropriate because the Kent facility does not possess a “separate identity” from the broader Washington/Montana Drivers & Dispatchers unit.

C. Summary of Errors by the Regional Director

1. The Regional Director erred in finding that the drivers in Woodinville, Spokane, Pasco, Butte and Billings operate with autonomy from Kent. In reaching this conclusion, the Regional Director ignores large portions of the record, and exaggerates others. But for this error by the Regional Director, the facts support a finding that the petitioned-for voting unit should be expanded beyond the fifteen (15) drivers based at the Kent facility, to include all drivers

² The Regional Director, correctly, did not address “bargaining history” in his unit determination analysis, as there is no bargaining history. See, DDE - III.B.1, at pp. 16 – 21.

in the Washington and Montana region, and the Kent-based dispatchers who work closely with them.

2. The Regional Director erred in finding that the functions, working conditions and skills among the route and long-haul drivers based in Washington and Montana were not nearly identical. The DDE focuses on the few inconsequential differences found among various driver locations, but ignores the litany of testimony describing the nearly identical job functions, working conditions and skills shared among the route drivers and long-haul drivers at all of the Washington/Montana facilities. But for this error by the Regional Director, the facts support a finding that the petitioned-for voting unit should be expanded to include all drivers based in Washington and Montana who report directly to the Kent facility.
3. The Regional Director erred in finding that a relative lack of interchange and contact among the drivers supports a failure to rebut the single-facility presumption. The drivers at issue in this case, by the very nature of their duties – whether in Kent or in the four other locations – have only limited interchange and contact with each other. The drivers spend their days on the road, by themselves. The Regional Director placed too much weight on this particular lack of interchange and contact, while at the same time giving far too little weight to the evidence of consistent, substantive contact with other employees, particularly the dispatchers. But for this error by the Regional Director, the facts support a finding that the petitioned-for voting unit should be expanded to the Washington/Montana Drivers & Dispatcher unit.

4. The Regional Director erred by giving inappropriate weight to the geographic-distance factor. Though some of the distances could be viewed out of context as significant, given the Employer's substantial use of and reliance on wireless technology, and given also the frequent travel by managers and supervisors throughout the Northwest Pacific District, matters of supervision and oversight are the same whether a driver is twenty miles or seven hundred miles away. But for this error by the Regional Director, the facts support a finding that the petitioned-for voting unit should be expanded to include all drivers based in Washington and Montana, as well as the Kent-based dispatchers.
5. The Regional Director erred in finding that there was a lack of functional integration between Kent-based dispatchers and the very drivers to whom they are assigned to dispatch. This conclusion is not supported by the record, and is contradicted also by the above-referenced Decision and Direction of Election from Region 32 regarding the very same job classification in the very same company. The Region 32 DDE found that Stericycle's route drivers and dispatchers are functionally integrated for bargaining-unit purposes.

ANALYSIS, ARGUMENT AND CITATIONS OF AUTHORITY

The petitioned-for unit approved by the Regional Director is inappropriate, and the Board has a solemn duty to ensure that the unit ultimately determined is in fact appropriate. As the Board stated in 1962, in *Kalamazoo Paper Box*, 136 NLRB 134, 137 (1962):

Because the scope of the unit is basic to and permeates the whole of the collective-bargaining relationship, each unit determination, in order to further

the effective expression of the statutory purposes, must have a direct relevancy to the circumstances within which collective bargaining is to take place. For, if the unit determination fails to relate to the factual situation with which the parties must deal, efficient and stable collective bargaining is undermined rather than fostered.

This Board must, therefore, determine a unit which does in fact meet the standard of appropriateness.

A. The Single-Facility Presumption is Overcome Upon Appropriate Consideration of the Board's Five-Factor Test

1. Degree of control over centralized operations and labor relations and lack of autonomy.

The three Washington state and two Montana locations, with respect to drivers, do not operate with any autonomy whatsoever. All fourteen drivers in these locations – a total of ten route drivers in Woodinville, Spokane, Pasco, and Billings, and four long-haul drivers in Butte – report up to transportation supervisor Mike Lewis in Kent. All fourteen drivers work on a daily basis with the Kent-based dispatchers (as do the long-haul drivers in Butte, when performing route duties on so-called “customer-loaded runs” [Tr., p. 386]). The Regional Director reached a contrary conclusion only by an incorrect reading of the evidence concerning the duties of the “lead route drivers” in Woodinville and Spokane. The Regional Director either misunderstood or exaggerated the very limited duties of these lead route drivers. [See DDE at p. 18].

The authority for virtually all supervisory decisions involving the Washington/Montana drivers lies in Kent with Transportation Supervisor Mike Lewis and Regional Operations Manager Christopher Dunn, not with lead route drivers at the various facilities. Mr. Lewis's testimony at Tr. pages 571-575 makes clear that the “responsibilities” of Mr. Homer – the lead

driver in Woodinville – are simply “to make sure that [the Woodinville drivers, a ‘couple’ of whom he described as ‘young’] are following through with our procedures, making sure their equipment is maintained and the paperwork and their appearance.” [Id., at 571]. Mr. Lewis indicated that Mr. McDevitt – the lead in Spokane – “does a little bit more than Mr. Homer,” but only with respect to two minor matters. [Id., pp. 572-75]. McDevitt (1) handles the drivers’ paperwork, but his only duty in this regard is that he “prints” the paper, and “organizes it and arranges shipping” [by UPS], which he sends “to Kent, Washington so we can process [it].” [Id., at p. 572, lines 12-24]; and he (2) “does periodic ride-alongs” with the sole driver in Pasco (only “because it’s easier for him to get down there”; however, Lewis also does ride-alongs with the Pasco driver as well as all drivers in all five locations [Id., at 463]).

The Regional Director went too far in finding that “local supervisors” have the authority to issue discipline, and play a “significant role” in hiring and in recommending wage increases [DDE at pp. 18 – 19], and ignored record testimony to the contrary.

Mr. Homer and Mr. McDevitt are nothing more than lead men, who answer exclusively to Mr. Lewis in Kent. The lead drivers do not assign particular job duties. [Tr. at 572]. Discipline is handled by Mr. Lewis from Kent, not at the facility. [See Tr. at 572 and 574-575; Lewis testified that while discipline issues haven’t arisen in Spokane, if they did, “Mr. McDevitt would talk to me about it and I would probably make a trip over there”; and with respect to Homer, Lewis answered “no” to the question whether Homer can “recommend any disciplinary action,” and stated further that he only “lets me know when he’s disappointed in their performance”].

Hiring and termination decisions are directed through human resources and Kent-based Regional Operations Manager Dunn. [DDE at p. 18]. As noted, while Mr. McDevitt will collate and ship in paperwork to the Kent facility, the route de-briefing and the cross-checking on all routes is done by a dispatcher at the Kent facility. [Tr. at pp. 325 – 330, 572].

Because Stericycle is able to effectively supervise its route drivers via company-issued cell phones and PDTs (Personal Data Trackers), the supervisory and control function remains grounded with Mr. Lewis in Kent, not with the two subordinate lead men in Woodinville and Spokane. By the nature of their work, route drivers can only be contacted during their route via cell phones and PDTs. When issues are raised by any Washington/Montana driver, it is via telephone to either Mr. Lewis or to the Kent-based dispatchers, whether those drivers are based out of Kent, Woodinville, Spokane, Pasco or Butte. [Tr. pp. 151, 308, 311, 386-87 and 460] The person to whom these drivers report (Lewis), the dispatching function, and the decision-making for nearly everything impacting these drivers are all based in Kent.

The Regional Director's conclusion that there is "no evidence" of overlapping supervision between classifications [DDE at p. 19] is contradicted by a plain reading of the record. The Washington/Montana drivers rely on Mr. Lewis, the dispatchers, and the Safety Manager, all based in Kent, for all of their authority. The facilities in Pasco, Butte and Billings have no lead route drivers at all, and rely solely on their connections with Kent. [Tr. at 571]. Mr. Lewis speaks to "every driver every day" for the purposes of supervision and direction. [Tr. at p. 460: "... I want to make sure they are working and I want to see how their day is going, if they have any issues with their equipment or routes."] He visits the drivers at the Woodinville facility on

a weekly basis, and at all other locations (though less frequently). [Tr. at p. 461]. From daily “tailgate meetings” meetings, to supply management, to deep dive audits, every element of every Washington/Montana driver’s day is audited, monitored, and directed directly by Mr. Lewis. [See Tr. at pp. 464-472]. None of this was mentioned in the DDE.

The record is unequivocal: Kent is *the* central point of authority and control over the operations for the Washington/Montana drivers.

2. Similarity of employees’ functions, skills and working conditions.

The Regional Director erred in finding there are “significant differences” between the functions of the Kent drivers and those at the other facilities. The record and prevailing Board law suggests just the opposite.

The drivers in all six locations in the Washington/Montana Driver unit perform the same duties – transportation of medical waste – and possess therefore the same skills. A comparison of the testimony of Mr. Geoghegan, a Woodinville driver, with the testimony of Mr. Horne, a Kent-based driver, along with the testimony of Mr. Lewis, Mr. Dunn and that of two dispatchers – McElderry and Wilson – shows that the same route driver job is performed by all Washington/Montana drivers in each of the locations, all of which is centrally controlled from Kent. The route drivers at all of the facilities begin at flexible starting and ending times, which vary according to daily route requirements. [Tr. at p. 372, 403]. The route drivers all report in to Kent via telephone and record their route information via PDT. [Tr. at pp. 140, 300-301, 318]. All route drivers, no matter their location, drop off empty containers to customers, pick-up waste, and transport that waste to another location. All wear the same uniforms, are

subject to the same policies and procedures, and hold the exact same job description. Throughout the day, all hear from the same person, Mr. Lewis, as part of their daily check-in, and will confirm any changes in their route with the Kent dispatchers.

The Regional Director went out of his way to find six (6) dubious difference between the facilities, in an effort to reach his insupportable conclusion that the driver jobs are different based on location. [See DDE at p. 20] The DDE points to the following assertions: (a) Kent drivers are the only drivers who perform warehouse work; (b) Kent drivers are the only drivers who punch-in on a time clock; (c) Kent drivers change into their uniforms at the facility; (d) Kent drivers perform their debriefings in person; (e) the vacation policy is based upon seniority within the facility rather than District-wide; and (f) there are different state licensing requirements between Washington and Montana. These are discussed in turn.

(a) Warehouse work

Kent drivers are not the only drivers who perform warehouse work - the Regional Director's facts are wrong. There is a warehouse in Spokane, but no warehouse worker assigned. [Tr. at p. 487]. This leaves the drivers to perform the warehouse work – the same as with the Kent drivers. In Woodinville, Mr. Geoghegan described the facility there, which doesn't have a warehouse but uses trailers parked in the yard, which effectively function as a warehouse, as this is where empty containers are stored for the driver's use. Hence, when the Woodinville drivers load and unload empty and filled containers into and out of these trailers, they are functioning as warehouseman in the same manner as is done by drivers in the larger Kent facility.

(b) Time clocks

All drivers in the Region are required to clock-in. The Regional Director's finding that the Kent drivers clock-in on a time clock located in Kent, while all of the other drivers clock in using some other mechanism, is a distinction without material difference. The more compelling, material question for the Board is whether the method of payment (e.g. hourly work, piece work, weekly salary, etc.) is the same for all drivers. It is the same. The physical mechanism used to track hours of work should not materially influence a question of whether the employees are performing the same job, or materially influence the ultimate determination of the bargaining unit.

(c) Uniform changes

The Regional Director is simply wrong with respect to his assertion that only drivers at the Kent facility change into their uniforms at work. [See DDE at p. 20]. While there is testimony from one Kent driver showing that he changes into his uniform at work, the Woodinville driver, Geoghegan, testified he *could* change at work – in the provided locker room in Woodinville – but he *chooses* to change at home. [Tr. at pp. 426-427]. There is no specific policy on this particular issue. [Id.]. There is no other record testimony about changing into or out of uniforms. For all the reader of this record knows, some of the Kent drivers may also choose to change uniforms at home.

(d) Debriefings

All Washington/Montana drivers must participate in a daily debriefing. The only difference between the Kent drivers and those in the five other locations is that the former are debriefed in person with the dispatchers in Kent, while the latter group is debriefed by telephone with the Kent dispatchers, and forward their papers for debriefing by fax or overnight mail. This difference is insignificant. The process and purpose of the debriefing is the same for all. Every driver knows that their job duties include a review of the day's route and reconciliation of paperwork.

(e) Vacations

The record shows that the Employer's vacation request procedure is uniform among all Washington/Montana drivers and is approved by the same person. The DDE ignores these similarities, and instead argues that utilizing a facility-based seniority system somehow negates the similarity of working conditions among the route drivers at the different facilities. This analysis avoids common sense.

Stericycle's process for requesting and approving vacation time is based on seniority only when employees submit their vacation requests between January 1 and January 31 for the following year. [Tr. at p. 434]. "After January 31, it is first-come/first-served..." [Id.]. It is not, as the DDE suggests, driven solely by seniority. Furthermore, vacation requests for all of the Washington/Montana drivers are submitted to one man, Mr. Lewis in Kent, for review and approval. [Tr. at pp. 434 – 434]. There is no difference from one facility to another.

The Regional Director’s finding that the seniority-by-facility policy of approving vacation requests is a “significant difference between the functions of Kent drivers and drivers at other transport facilities” is wrong. In fact, rather than evidence of a difference, Stericycle’s consistent region-wide vacation request policy, and the centralized, Kent-based vacation approval authority are evidence that the petitioned-for unit should be expanded.

(f) Licensure

Contrary to the Regional Director’s assertion, the record shows that Kent drivers have the exact same licensing requirements as all other Stericycle facilities in Washington and Montana. All drivers in Washington and Montana, not just in Kent, are required to have a CDL-A license if they are driving a “long-haul” truck. [Tr. at p. 126]. All route drivers, not just those in Kent, driving trucks that weigh less than 26,000 pounds in the State of Washington are required by Stericycle to have a regular driver’s license with a Department of Transportation medical card that is received after a medical examination. [Tr. at. pp. 126, 416]. The testimony is clear that all drivers at all Stericycle facilities in the State of Washington, have the same licensure requirements.

While there is testimony that all Montana drivers have a CDL-A license – or, long-haul (tractor trailer) driver license – this is simply a function of the fact that most of the Montana drivers do long-haul driving, and must have this license, just like the long-haul driver in the petitioned-for unit in Kent. It is for this reason that Stericycle is able to temporarily transfer drivers from one facility in the region to another to cover a driver’s vacation or sick leave. [See e.g. Tr. at pp. 198-199, 367, 380-81, 437].

* * * * *

Consequently, applying common sense, and contrary to the findings of the Regional Director, it is fundamentally true that drivers in all Washington/Montana locations experience substantially identical working conditions.

3. Employee interchange or contact. Relative to the first two factors above, this third factor is insignificant under the circumstances of the present case. The plain fact of the matter is that *all drivers* – regardless of location, including the drivers who drive the Kent routes – operate independently of each other when performing their daily duties. Each driver is out on the road, by himself, making customer stops, collecting waste, and delivering clean containers (in the case of route drivers) or hauling waste between plants and transfer locations (in the case of long-haul drivers). The contacts which occur amongst the Kent drivers at the beginning and end of their shifts are infrequent – given the varying shift start-times, ranging between 1:00 a.m. and 7:00 a.m. – and are brief and inconsequential. The fact there is only a modest amount of interchange is simply a function of the geographic separateness of the locations. Accordingly, the relatively low frequency of interchange and contact does not weaken or undermine the overall conclusion, derived primarily from application of the first two factors, that the Kent facility does not possess a separate identity.

4. Bargaining history. There has been no bargaining history, and this is therefore a non-factor, as noted above (see footnote 2).

5. Distance Between Facilities. As the Regional Director correctly notes, the fact there are large geographic distances “is not a determinative factor in multi-facility analysis.” [D.D.E., p. 21; citing to Orkin Exterminating, 258 NLRB 773 (1981)]. In Orkin, distances of 50 to 230 miles were not deemed determinative. Similar to Orkin, distances between facilities in a Washington Drivers unit range between 25 miles (Kent to Woodinville) and 250 miles (Kent to Spokane). [summarized in D.D.E. at p. 16]. While the Regional Director notes the distances to the two Montana facilities are greater (500 and 700 miles), once again, given the overwhelming evidence of centralized control over operations and labor relations, and the complete identity of functions, skills and working conditions, such distances are of small importance.

Moreover, in weighing this element, the Board should recognize recent advances in communications technology, which renders the reliance on old Board cases regarding the significance of geographic distances substantially out of date and irrelevant. As the record here reflects, Stericycle relies heavily on its use of wireless technology – specifically, cell phones and the Personal Data Trackers, as well as computer document-scanning and facsimile transmission.

B. The Dispatchers Should be Included in the Voting Unit

The Board should take administrative notice of the December 28, 2008 unit determination decision in Stericycle, case no. 32-RC-5603, at pages 43-45, wherein the Regional Director of Region 32 described from the record in that case the duties of the two Stericycle dispatchers in San Leandro, California. The duties described therein are identical in all material respects to the testimony received in this present case:

The dispatcher and biotrack administrator³ debrief at the completion of their routes, including downloading and administering the PDT information from the drivers, and assist in preparing the drivers' route sheets for the following day. ... [they] serve as liaisons between customers and route drivers juggling a host of issues posed by missed stops, prematurely full trucks, dissatisfied customers, evolving customer needs, and other daily developments. ... [they] work at the same transportation facility as the route drivers, report to the same second level transportation supervisor as the drivers (Sam Escobar [here, Mike Lewis]), and are paid on an hourly basis like the drivers.[they are subject to the same Employer policies and practices as the drivers and many of the same terms and conditions of employment as the drivers. ...

... there is ample evidence of substantial direct daily contact between the dispatcher and biotrack administrator and the route drivers with whom they would be placed [in a bargaining unit].

These described duties are identical to those testified to in the present case by McElderry (Tr., pp. 294-332), and by Wilson (Tr., pp. 365-401). On this evidence, Region 32 determined that the dispatchers are plant clerical, not office clericals, in that they "perform functions closely allied to the work of the employees with whom they are sought to be grouped," citing to Palagonia Bakery Co., 330 NLRB 515, 535 (2003) and Desert Palace, Inc., 337 NLRB 1096, 1098 (2002).

Consistent with the Regional Director in Region 32, it would be inappropriate to exclude the three dispatchers in Kent. As Region 32 pointed out, "Petitioner bears the burden of

³ This title, 'biotrack administrator,' was also in use in Kent in 2008. As Ms. McElderry testified quite clearly, at Tr. pp. 315-16, this title is no longer in use in either Kent or in San Leandro (she also had that title, in 2008). This title referred only to the computer program in use at that time, and the change away from that title does not reflect any differences in the functions performed. The function performed, today, by the dispatchers in San Leandro, and by McElderry, Wilson and Cowan in Kent, are the same (see, p. 316, lines 1-3: Q: "So the job you're doing now is the same job you were hired into [in 2008, as a biotrack administrator]?" A: "Yes.").

establishing ineligibility,” citing The Kroger Company, 342 NLRB 202, 204 (2004). Like the Petitioner in that case, the Petitioner here has failed to carry this burden.

CONCLUSION

For the reasons stated above, and upon the authority cited above, the Board should grant this request for review, and should then determine that the petitioned-for unit constitutes an inappropriate, “fractured” unit, which must be broadened to include the drivers based in Woodinville, Spokane, Pasco, Billings and Butte, along with the three Kent-based dispatchers.

Respectfully submitted, this 31st day of October, 2012.

STOKES ROBERTS & WAGNER

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TEAMSTERS, LOCAL 174,

Petitioner.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Request for Review was electronically filed with Region 19 using the NLRB website and was sent to the following by electronic mail as follows:

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This 31st day of October, 2012.

/s/ Karl M. Terrell
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