

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

**AMERICAN DISPOSAL SERVICES OF WEST
VIRGINIA, INC. D/B/A REPUBLIC DISPOSAL
SERVICES OF WEST VIRGINIA AND D/B/A SHORT
CREEK LANDFILL**

Employer

and

Case 06-UC-124860

**TEAMSTERS LOCAL UNION #697 A/W
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, American Disposal Services of West Virginia, Inc. d/b/a Republic Disposal Services of West Virginia and d/b/a Short Creek Landfill, operates a commercial and residential waste collection and disposal business outside of Wheeling, West Virginia, where it employs approximately 55 employees. The Petitioner, Teamsters Local Union #697 a/w International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to accrete the bargaining unit employees working in the Employer's Short Creek Landfill division into the bargaining unit of employees working in the Republic Disposal Services division. Both bargaining units are now based at the Employer's Wheeling facility, and both are currently represented by the Petitioner in two separate units. A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

The Petitioner, contrary to the Employer, contends that the petitioned-for clarification combining the two groups of employees to form a single unit is appropriate. The Petitioner maintains that the 2012 consolidation of the operating offices of two divisions of the

Employer, which had previously been located several miles apart into a single facility, created a shared community of interest among the employees sufficient to warrant an accretion of the smaller unit into the larger unit. The Petitioner claims that its position is further supported by the fact that the Employer of the two units is a single employer. In response, the Employer asserts that the two bargaining units have historically been separate units and that there have been no recent, substantial changes in either of the bargaining units so as to warrant the accretion sought by the Petitioner. The Employer argues that its 2012 organizational changes did not alter the terms and conditions of employment of the bargaining unit employees so as to justify their inclusion in a single unit at this time.

I have considered the evidence and the arguments presented by the parties with respect to the issues presented. As discussed below, I have concluded that clarification of the units into a single unit is not appropriate here because there are no compelling circumstances to establish that the two historical units are no longer appropriate because of recent substantial changes made to the units. I have concluded that it is not necessary for me to reach the issue of whether single employer status exists here as it would not compel a different result regarding the petitioned-for accretion or the separateness of the bargaining units. Accordingly, I am dismissing this petition.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW

The Employer, American Disposal Services of West Virginia, Inc. d/b/a Republic Disposal Services of West Virginia and d/b/a Short Creek Landfill, is engaged in the commercial and residential waste collection and disposal business. In addition to other business operations which are not at issue in this proceeding, the Employer, as Republic Disposal Services of West Virginia (the "Hauling" division), operates a waste collection and hauling business in the

Wheeling area with about 48 employees who are truck drivers, helpers, and mechanics.

Additionally, the Employer, as Short Creek Landfill (the "Landfill" division), operates a public commercial landfill outside of Wheeling where it employs about 8 employees.

The Petitioner was certified as the representative of certain employees employed in the two above-referenced divisions of the current Employer on March 27, 2001. At that time, the parties entered into separate Stipulated Election Agreements for two separate appropriate units in Case Nos. 6-RC-11943 (Landfill) and 6-RC-11936 (Hauling), respectively. Separate Board elections were conducted in which the Petitioner prevailed in both instances. The Petitioner and the Employer subsequently entered into individual collective bargaining agreements for the Hauling division and Landfill division bargaining units which had the following identical effective dates: from December 31, 2001 to March 1, 2005; from March 2, 2005 to March 1, 2008; from March 2, 2008 to March 1, 2011; and, from March 2, 2011 to March 1, 2014. In the referenced collective bargaining agreements, the pertinent recognition clause and bargaining unit description excluded the employees from the other division. The record reveals that in every set of negotiations, the Petitioner proposed that the units be combined and each time that request was rejected by the Employer. However, the negotiations for both collective bargaining agreements were conducted together and those contracts are virtually identical other than with respect to the provisions for wages.

By letter dated February 24, 2014, the Employer notified Petitioner that it was suspending bargaining for a successor contract for the Landfill division as it had received objective evidence that Petitioner no longer represented a majority of the employees in that bargaining unit. By letter dated April 3, 2014, the Employer withdrew recognition of the Petitioner as the representative of the Landfill division employees. The parties continued to bargain regarding a contract for the Hauling division bargaining unit and a new collective bargaining agreement was ratified, which is effective from March 2, 2014 to March 1, 2017.

II. FINDINGS OF FACT

A. The Employer's Operations

The Petitioner contends that the entities involved herein constitute a single employer. The Employer does not agree with Petitioner and further contends that the inquiry in this regard is irrelevant under these facts.

For purposes of this proceeding only, the parties stipulated that the Short Creek Landfill and Republic Services of West Virginia each are operating divisions of American Disposal Services of West Virginia, Inc., which is the employing corporate entity for employees at both the Landfill division and the Hauling division.¹

The overall operations of the Hauling and Landfill divisions of the Employer are the responsibility of its General Manager Keith Koebley. In addition to the two divisions involved in this proceeding, Koebley also manages a separate waste hauling operation in Fairmont and a waste transfer station in Morgantown, both located in the State of West Virginia. These four divisions managed by Koebley comprise a business unit within the Employer's internal organization.

Reporting directly to Koebley is the Hauling Operations Manager Jerry Garlitz and the Landfill Manager Ed Johns, in addition to the managers of the two other divisions referred to above. In the Landfill division, Johns directly supervises the bargaining unit employees. In the Hauling division, there are two route managers, Russell Hastings and Milton Van Horne, who report to Garlitz and are the direct supervisors of the employees in that bargaining unit. There is also a maintenance manager, a maintenance supervisor, and a dispatcher in the Hauling division. The record indicates that office personnel, including both management and support staff, apparently service both divisions and other personnel have responsibilities in all four of the business unit's locations for such functions as human resources, environmental, maintenance,

¹ Joint Ex.1.

and engineering. In this regard the record reveals that some of these individuals are based in locations other than the Wheeling facility.

The Hauling division utilizes trucks whose crews collect garbage and recycling from residential, commercial, and industrial customers and transport the material to the Landfill. The Hauling division operates in multiple counties in the tri-state area of West Virginia, eastern Ohio, and western Pennsylvania, all of which are in fairly close proximity to the Wheeling facility. The bargaining unit employees are the drivers and helpers who staff the various types of collection trucks and the mechanics who repair and maintain the vehicles.

The Landfill division serves the public in and around the Wheeling area. The Hauling division brings all of its waste collection to the Landfill division and is its largest customer, accounting for approximately half of its monthly volume. However, the Landfill division also has many third party customers, including townships, counties, and the City of Wheeling. As the Landfill is open to the public, it is also used by individuals. The Landfill division's bargaining unit employees are the operators who run the heavy equipment in the landfill cells, a scale weigh master, and a mechanic.

The record reveals that when the bargaining units were certified, the Hauling division was based in a different location near Wheeling, which was about four miles away from Landfill. In about 2012, the Employer built a new building with offices and garage bays ("the facility") near the landfill and the employees of both the Hauling and Landfill divisions have since reported there. It appears that the Hauling division owns the land where the facility is located, and the assets of the facility, with the attendant debt, are recorded on its balance sheet. The record indicates that the Hauling division is also responsible for the facility's utilities. The record does not reveal if the Landfill division pays rent to the Hauling division for the use of its portion of the facility.

In the front of the facility are business offices for the general manager, controller, sales manager, the customer service department, the billing staff, and sales representatives. At one end of the facility is the office of Landfill Manager Johns, which is the only office exclusively,

used by Landfill. In another area are the offices for the Hauling Manager and the two route managers, and the dispatcher. In the back of the facility is the maintenance department with offices for the Maintenance Manager and the Maintenance Clerk, and a desk for the Maintenance Supervisor.

The facility has a shop for the use of the mechanics. There are four or five truck bays where the Hauling division's mechanics service the various types of vehicles used in refuse collection. There is one specified heavy equipment mechanic employed by the Landfill division who services all bulldozers, backhoes, and other machinery used by Landfill. There is a separate bay for the landfill equipment work because the floor is reinforced with additional steel and concrete to handle the weight of those machines. There is also a separate entrance to that bay from the landfill to prevent damage to the roads which could be caused by the use of the heavy equipment.

The facility also has a conference room, a training room, a drivers' room (where employees complete their pre and post-trip paperwork), a time clock, a vending machine/lunch area, and two locker rooms (for men and women). Outside is a large parking lot where the Employer's collection trucks are parked and where employees, management, visitors, and customers also park.

The nearby property,² where the Landfill itself is located, also contains an office building where the Landfill division's offices were formerly housed. This building is now a storage area and is also used by a subcontractor who builds the cells in the landfill.³ In addition, there is a scale house where the weigh master works to weigh the incoming vehicles bringing waste material to the landfill. The Landfill equipment generally stays in the cells unless something is sent to the facility for mechanical work.

² The record does not reveal the relative distances between these two sites.

³ A landfill cell is an area, from three to five acres, which is excavated and then lined with a geo synthetic membrane. After inspection by the Department of Environmental Protection, the cells are filled with waste material and then capped and covered. As one cell is being filled, the next cell is being built.

The Landfill division employees work two shifts: one group starts early and opens the landfill at 6:30 a.m. and the other group works later in the day and closes the landfill in the afternoon. Since 2012, Landfill employees have reported to the facility to clock in and then go to their work locations. They take staggered lunch breaks at the facility, usually in the lunch area. The Landfill division employees do not leave the landfill during their working hours.⁴

The Hauling division's drivers and helpers begin their staggered work shifts between 3:00 a.m. and 5:30 a.m. and work until their routes are completed. They report to the facility to clock in and prepare their paperwork in the drivers' room. They leave the facility to cover their scheduled routes and take their lunch breaks along the way. The mechanics remain at the facility to perform their jobs and for lunch.

The record establishes that Hauling division employees are supervised by the two route supervisors and the Landfill division employees are supervised by the Landfill Manager Johns. The two groups have separate working schedules posted, separate overtime lists, and separate seniority rosters. The record reveals that the employees of the two divisions have different job classifications and different wage scales that have been set forth in the two respective collective bargaining agreements. They perform their tasks using different types of machinery and equipment and the two groups receive separate safety and other training from the Employer as their working conditions and job responsibilities differ.⁵ The Hauling division employees primarily work away from the Employer's facility whereas the Landfill division employees work exclusively on the property. The Landfill employees regularly work a half-day on Saturdays while the Hauling employees rarely perform weekend work. The Hauling division's drivers must follow DOT guidelines and are required to maintain a Commercial Drivers' License (CDL)

⁴ The exception to this is the Employer's periodic "good neighbor" litter clean-up and sweeping along the adjacent roadways. In this regard the record indicates that either division may provide employees for this task at times.

⁵ There is no cross-training program between the two groups of unit employees.

license. These are not requirements for Landfill equipment operators, and it appears that none of these employees possess a CDL.

In addition to sharing the facility since 2012, the employees of the two bargaining units have the same health care benefits and 401(k) plan, and are governed by the same corporate-wide Human Resources and personnel policies. Other terms and conditions of employment are in compliance with the two collective bargaining agreements and there exist both similarities and differences between these. All employees are subject to random drug testing. All employees use the same safety manual which is corporate-wide. Both groups of employees wear uniforms which are provided by the Employer (under a national contract through the parent corporation) although the uniforms differ between the Hauling and Landfill divisions. All employees are provided personal protective equipment by the Employer which is largely the same, other than to the extent that the differences in the work of the two divisions require some different items. Employees are not issued any type of identification badges but do receive key fobs which identify them electronically when used to access the facility or to obtain equipment from the supply area.

As mentioned above, the Hauling and Landfill divisions have separate day-to-day direct supervision although management at the operations level and above is the same. The separate immediate supervision involves decisions regarding hiring, direction of work, scheduling, disciplinary actions (the form itself is corporate-wide), performance evaluations, and the granting of time off. There is no evidence of day-to-day supervision extending across divisional lines for any of the employees.

While the two divisions operate as a whole to the extent that the Hauling division employees routinely bring nearly all of its collected waste to the Landfill division, and is its largest customer, nearly fifty percent of Landfill's business comes from other third-party customers. In this regard, the record indicates that the Hauling and Landfill divisions have no common customers. The record further indicates that in certain limited circumstances, the Hauling division will utilize other landfills.

The Hauling and Landfill divisions are managed as separate entities within the Employer, with separate balance sheets and separate profit and loss statements. Landfill bills Hauling for the waste that it brings to the landfill and Hauling is charged the same rate as Landfill's other customers. Hauling's trucks receive no priority or special consideration from Landfill. However, Hauling does not actually pay the charges it receives from Landfill; the liabilities are resolved by the Employer's internal bookkeeping transactions.

Other than the use of the shared facility, there is little evidence of interchange of equipment or employees. As set forth above, the collection vehicles are used exclusively by the Hauling division's bargaining unit and the Landfill division's machinery and equipment resides at the Landfill facility. In the thirteen year history of the parties' bargaining relationship, there were only two occasions of permanent employee transfers between these two divisions.⁶ In these cases, the employees who transferred retained their accrued vacation entitlements, but moved to the bottom of the new employing division's seniority list for vacation scheduling and other contractual matters. The only evidence of temporary employee interchange involved a Hauling welder working with the Landfill welder for an extended period of time about ten years ago.⁷ There is no evidence of day-to-day substitution of employees between the two divisions for any reason.

B. Changes in the Bargaining Units

As noted above, the two bargaining units at issue were certified in 2001, when Hauling employees reported to a different location. About June 4, 2012, for reasons that were not made a part of the record, the Employer consolidated the offices of both the Hauling and Landfill divisions into one newly constructed facility. The employees of both divisions now report there at the beginning of their respective shifts although only the Hauling and Landfill mechanics actually perform unit work in this facility.

⁶ Neither contract provides any right or procedure for any employees to transfer between divisions.

⁷ There are no longer any welders in either bargaining unit as welding work is subcontracted to third parties.

While it appears from the record that there is only one mechanics' shop even though both the Hauling division and Landfill division have employees who are mechanics, there is a paucity of evidence in the record concerning this shop. The record does not indicate if employees spend any time in that area or if it is used only for storage. There is no evidence that the Hauling division mechanics share any tools or equipment with the Landfill division mechanic. However, it is clear that the mechanics employed by the two divisions do not share work areas as there is a dedicated work bay for the Landfill heavy equipment, even though all of the maintenance bays are under one roof.

All of the Hauling division employees except the mechanics spend the bulk of their workday out of the facility on their collection routes, just as they did before 2012. They take their breaks along their routes and any contact with employees in the other bargaining unit is generally limited to seeing them in and around the landfill while they are dumping their loads before going out again on their collection routes. Hauling division drivers may speak with the scale weigh master at the scale house. The Landfill division's bargaining unit operators spend their workdays in the cells of the landfill using heavy equipment to move and compact the waste that is delivered by truck.

The possibility exists that the Employer's employees could see each other around the facility, locker rooms, or parking lot at the beginning or end of their shifts. However, all employees work many different shifts so this contact could occur only randomly. Landfill division employees might see the mechanics who work in the facility during their lunch breaks but the record does not reveal if these two groups have common break times or working hours.

Absent the relocation of the employees of the two divisions to one facility as a reporting location, the record does not reveal any significant or substantial changes to the working conditions of any employees in either bargaining unit. The employees' job descriptions, the type of work they perform, and the methods by which bargaining unit work is performed appears to have been consistent during the parties' entire thirteen year collective bargaining relationship,

as well as since the Employer's office consolidation in 2012, almost two years ago. Neither is there evidence of any material change in shifts, routes, or the operating hours of the divisions.

The record reveals that there was one work assignment that was shifted between the two divisions in about 2013. The task was the hauling and dumping of "citizen boxes" or courtesy boxes which have for many years been located on Landfill property. These courtesy boxes are containers where the public can deposit material for disposal. When they became full, the Landfill employees would move them into the landfill, using an old roll-off truck that had been given to Landfill to use for this purpose. Apparently the Landfill division employees continued to do perform this work⁸ even after the Hauling division employees began to report to the facility in 2012. However, at some point in 2013, the old roll-off truck was beyond repair and was not replaced. Instead, management decided that a Hauling division roll-off driver would use his vehicle and be responsible to transport the courtesy boxes from the public drop-off point to the landfill cell. The Hauling division charges the Landfill division \$125 for each courtesy box moved and emptied under this arrangement.

III. ANALYSIS

A. The Petitioned-for Bargaining Unit

It is well established that the Board does not clarify a bargaining unit to interfere with or change a long-term collective-bargaining history. *Canal Carting, Inc.*, 339 NLRB 969, 969-970 (2003). Further, where a long-term bargaining relationship exists, the Board places considerable weight on bargaining history. It is equally clear, as the Board noted in *Mayfield Holiday Inn*, 335 NLRB 38, 41 (2001), that the party challenging an historical unit bears the burden of showing that the unit is no longer appropriate⁹ and that "compelling circumstances" are required to overcome the significance of bargaining history."¹⁰ Thus, the party seeking to

⁸ The record does not indicate how often these boxes must be dumped.

⁹ *Indianapolis Mack Sales*, 288 NLRB 1123 fn. 5 (1988).

¹⁰ Cited with approval in *Massey Energy Co.* 358 NLRB No. 159, slip op. at 56 (2012).

alter an established bargaining relationship has a heavy evidentiary burden to show “compelling circumstances” sufficient to overcome the bargaining history when an employer merges prior separate companies or internally reorganizes its own operations.¹¹

Although the Board’s unit clarification proceedings are most frequently used to clarify unit placement of specific employees, they have also been used to clarify unit scope issues to determine whether previously separate units have, by the parties’ actions, been merged into a single appropriate unit or divided into two or more appropriate units. Such unit clarification proceedings require an analysis of whether the unit, if clarified, would constitute an appropriate unit under general unit determination principles. See, e.g., *Armco Steel Co.*, 312 NLRB 257, 259 (1993) and cases cited therein.

As noted above, the Petitioner maintains that the 2012 consolidation of the operating offices of two divisions of the Employer into a single facility created a shared community of interest among the employees sufficient to justify the accretion of the smaller Landfill division unit into the larger Hauling division unit. In response, the Employer asserts that the two bargaining units have historically been separate units and that there have been no changes in the circumstances of the unit employees which would substantiate the accretion sought by the Petitioner.

Therefore, the issues presented are whether clarifying the two existing units into a single bargaining unit as urged by the Petitioner is appropriate and whether the Petitioner has met its burden of establishing that there are “compelling circumstances” to disturb the historical units. Based on the above, I find that the instant matter lacks the “compelling circumstances” needed to require unit clarification and that the Petitioner has failed in its evidentiary burden to show that

¹¹ “Compelling circumstances” have been argued as a basis for upsetting prior bargaining history in a number of accretion cases, including *Rock-Tenn Co.*, 274 NLRB 772 (1986) (Board clarified an historical two-plant unit into separate units following the sale of the separate units); *Gitano Group, Inc.*, 308 NLRB 1172 (1992) (Board established a presumption that a transfer of a portion of a represented unit to a new facility created a separate unit); *Ready Mix USA, Inc.*, 340 NLRB 946 (2003) (Board found successor employer failed to show that changes in operation of the newly acquired facilities made representation of block plant and batch plant employees in a single unit no longer appropriate); and *AC Management, Inc., d/b/a Mayfield Holiday Inn*, supra (Board affirmed ALJ’s separation of a prior multi-location unit into two separate units following the sale of the two hotels to separate entities).

the historical units are no longer appropriate. I note that there is no evidence that the consolidation of the reporting locations functionally integrated the operations and/or caused interchange in the performance of the work by these unit employees so as to create compelling circumstances as to warrant the combination of the two units into one unit.

In assessing community of interest, the Board weighs factors such as: control over daily operations and labor relations (including the extent of local autonomy); similarity of employee skills, functions and working conditions; degree of employee interchange; common day-to-day supervision; distance between locations; integration of operations; and bargaining history, if any. *E.I. Du Pont de Nemours, Inc.*, 341 NLRB 607, 608 (2004); *U.S. Tsubaki*, 331 NLRB 327 (2000). The Board has identified the degree of employee interchange and common day-to-day supervision as particularly important factors. *Passavant Retirement and Health Center, Inc.*, 313 NLRB 1216 (1994); *Super Valu Stores*, 283 NLRB 134, 136 (1987).

Initially I note that the primary change in the bargaining units relied upon by Petitioner, the consolidation of the management offices and reporting locations of the employees of both units, is not particularly recent, having occurred more than 1½ years prior to the filing of the instant petition. Most importantly, however, this change in reporting location does not appear to have had a sufficiently substantial effect on unit employees so as to create any doubt as to the appropriateness of the continued separation of the Hauling division and Landfill division bargaining units. The Petitioner asserts the existence of factors which support a community of interest between the two bargaining units such as the increased potential for contact between employees in the two units and the sharing of the locker rooms, parking lot, and rest rooms. The Petitioner also cites the facts that the Employer remits the monthly Union dues for both units in a single check and that the Union now utilizes a single shop steward since there is only one reporting facility. However, these factors have little significance to the unit question.

Overall, I find that there is insufficient evidence in the record to establish the working conditions, interchange, supervision, day-to-day functions or work locations of bargaining unit employees have undergone material or substantial changes as result of the Employer's 2012

office consolidation. I further find that, after consideration of the factors cited by Petitioner, these considerations do not outweigh the separate working conditions, the lack of employee interchange, and the separate day-to-day supervision, as well as the historical separation of these two bargaining units, so as to require an accretion of the Landfill division employees into the Hauling division bargaining unit. See *Passavant Retirement and Health Center*, supra; Cf., *E.I. Du Pont de Nemours*, supra.

Based on the above and the record as a whole, unit clarification is unwarranted here because there has been no actual integration or merger of operations at the bargaining unit level, and thus, there are no compelling circumstances requiring clarification of the two appropriate bargaining units into a single bargaining unit. Accordingly, the Landfill division employees cannot be accreted into the Hauling division bargaining unit, and this petition must be dismissed.

B. Single Employer

The Petitioner contends that the Hauling and Landfill divisions are a single employer. The Employer denies the existence of a single employer and further contends that the inquiry in this regard is irrelevant here.

I have already concluded that the Petitioner has not carried its burden to show that compelling circumstances have occurred with respect to the bargaining units so as to establish such a community of interest between the two existing bargaining units so as to render those separate units inappropriate. Further, whether the Employer is a single employer is immaterial as the Employer's status in this regard is not determinative of the unit question. *Lawson Mardon U.S.A.*, 332 NLRB 1282 (2000). Therefore, given my determinations and disposition of the other issues in this case, I find it unnecessary to resolve the issue of whether the Employer is a single employer as contended by the Petitioner.

IV. FINDINGS AND CONCLUSIONS

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner is a labor organization within the meaning of the Act.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Petitioner proposes to clarify the two currently recognized bargaining units consisting of the Hauling division employees and the Landfill division employees of the Employer into a single bargaining unit of employees based at the Employer's Wheeling, WV facility.
6. Clarification of the two existing bargaining units is not appropriate under the circumstances herein.

V. ORDER

The petition in this matter is dismissed.

VI. 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, DC 20570-0001. This request

must be received by the Board in Washington by May 29, 2014. The request may be filed electronically through the Agency's website, www.nlr.gov,¹² but may not be filed by facsimile.

Dated: May 15, 2014

/s/Rhonda P. Ley

Rhonda P. Ley, Acting Regional Director

NATIONAL LABOR RELATIONS BOARD
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¹² 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.