

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

BFI WASTE SERVICES, LLC
D/B/A ALLIED WASTE SERVICES OF BALTIMORE
OR REPUBLIC SERVICES OF BALTIMORE

Employer¹

and

Case 05-RC-128231

MARYLAND PUBLIC EMPLOYEES COUNCIL 67
OF THE AMERICAN FEDERATION OF STATE
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing on the petition was held on May 20, 2014 before a hearing officer of the National Labor Relations Board, herein called the Board. The Employer, BFI Waste Services, LLC d/b/a Allied Waste Services of Baltimore or Republic Services of Baltimore, (hereinafter “Employer”) and the Petitioner, Maryland Public Employees Council 67 of the American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter “Petitioner”) appeared at the hearing. The Petitioner seeks to represent a plant-wide unit of “all permanent full- and part-time drivers, helpers, spotters, painters, mechanics, and welders” employed by the Employer, excluding all professional employees, office clerical employees,

¹ The petition and formal papers were amended at the hearing to reflect both the Employer’s and Petitioner’s correct legal name.

guards, and supervisors as defined by the Act, located at 260 West Dickman Street, Baltimore, Maryland, herein called the Dickman facility.²

I. ISSUE

The Employer raised one issue in this proceeding: whether the petitioned-for unit is an appropriate unit for collective bargaining because the employees in the proposed unit do not share a community of interest.³

II. POSITIONS OF THE PARTIES

The Petitioner argues its petitioned-for unit, a single facility unit, is a presumptively appropriate unit. There are approximately 105 employees in the petitioned-for unit. The Petitioner argues that there is functional integration and common working conditions among the petitioned-for employees.⁴ The Employer contends that the petitioned-for unit is not appropriate, as the classifications do not share a community of interest. According to the Employer, there are

² The parties stipulated that any unit found appropriate should include lead drivers and lead mechanics employed by the Employer at its Dickman facility and should exclude dispatchers, sales employees, construction representatives, credit and collection specialist, controller, assistant controller, container shop clerk, route auditor, operations clerk, billing processor, accountant, maintenance clerk, maintenance shop supervisor, container shop supervisor, route supervisor, professional employees, office clerical employees, temporary employees, managers, and supervisors defined by the Act. Furthermore, throughout this Decision, the terms “lead mechanics” and “lead technicians” are used interchangeably.

³ The Employer attempted to raise the issue of supervisory status of lead drivers. However, the hearing officer properly refused to allow the Employer to introduce evidence regarding the supervisory status of lead drivers because the Employer refused to take a position on their status. *Bennett Indus., Inc.*, 313 NLRB 1363 (1994). The Board’s responsibility to ensure due process for the parties in the conduct of Board proceedings requires that the Board provide parties with the opportunity to present evidence and advance arguments concerning relevant issues. While the hearing is to ensure that the record contains as full a statement of the pertinent facts as may be necessary for a determination of the case, hearings are intended to afford parties full opportunity to present their respective positions and to produce the facts in support of their contentions. *Id.* Here, the Employer refused to take a position on the supervisory issue both at the hearing and in its post-hearing brief. Since the burden of proving supervisory status rests with the party alleging that the supervisory status exists, and here the Employer failed to take a position, there is no need to obtain record evidence on this issue.

⁴ The facility at issue involves three identifiable departments: drivers; mechanics/technicians; and container employees.

6 container shop employees, 12 mechanics, 27 roll-off drivers, 37 front-load drivers, and 23 rear-load drivers.

The Employer presented as its witness its facility general manager, John Blevins, who has been employed by the Employer for less than one year. The Petitioner did not present a witness.

III. CONCLUSION

For the reasons that follow in this Decision, and after careful consideration of the entire record evidence and the parties' post-hearing briefs,⁵ I conclude that the Employer failed to rebut the single-facility presumption, and the petitioned-for unit is *an* appropriate unit for bargaining.

IV. FACTS AND ANALYSIS

A. The Employer's Business Operations

The Employer is a Delaware limited liability company and has an office and place of business in Maryland. It provides waste disposal services and maintains numerous facilities in the United States, including the Dickman facility, the only facility pertinent to this hearing. The petitioned-for unit consists of three distinct operations: trash collection; truck mechanics; and the container shop.

1. Trash Collection

General Manager John Blevins is responsible for the daily operations of the business in the Baltimore area. Assistant General Manager Glenn Kavanagh reports directly to Blevins. Operations Manager Michael Bowers oversees all hauling and trash collection operations. The trash collection operation consists of commercial, residential and industrial trash. Four route

⁵ After briefs were filed, the Employer filed a motion to strike the Petitioner's brief because it did not include any citations to the transcript. I deny the Employer's motion.

supervisors report to Bowers. Tim Cook oversees rear-load residential and commercial trucks, which are the trash collection trucks typically seen in most residential neighborhoods. Malik Woods and Chris Lamb oversee front-load drivers, who pick up trash collected in containers at commercial businesses. These trucks pick up the container from the front of the truck, lift it over the front end, and dump the trash in the back of the truck. William Thomas is responsible for the roll-off line of business. These drivers are responsible for picking up large trash collection containers normally seen at construction sites, warehouses, and industrial sites.

In the morning, the trash drivers receive their route assignment, conduct a pre-trip check, and are on the road anywhere from 8 to 12 hours per day. Depending on when they began their route, drivers return back to the yard sometime in the afternoon, conduct a post-trip inspection, submit a vehicle condition report, and clock out.

The first route drivers are expected to start around 2:00 a.m. A majority of drivers start their shift at 5:30 a.m., and the last driver leaves the facility around 6:30 a.m. The majority of the mechanics start their shifts in the afternoon because the trucks are coming back to the facility at that time and the Employer wants the mechanics to start working on repairs.

2. Truck Mechanics

Maintenance manager Tracy Poston has three supervisors who directly report to him: truck shop supervisors Darrin Post and Anthony Byers; and container shop supervisor Laverne Murchison. Post and Byers are responsible for reviewing the vehicle condition reports, determining what work needs to get done each night, and assigning repair orders to specific mechanics. The truck mechanics work in the truck shop, which is located directly behind the office area, repairing trucks.

3. Container Shop

As discussed above, Murchison oversees the container shop employees and reports directly to maintenance manager Poston. The container shop includes two container drivers, a welder, a painter, and two container repairmen. Container shop drivers deliver empty containers to customers and retrieve the containers when they require new lids or when the Employer loses a customer. When full, the containers are picked up by the trash collection drivers.

B. Community of Interest Factors

Drivers are either paid a day rate or an incentive rate. The day rate, a flat rate for work that day, is usually paid to new drivers. Once a driver becomes proficient at the job, they are assigned a route and the driver is paid incentive pay, which is determined based on the number of stops and/or the size of the containers collected. Mechanics and container shop employees are paid hourly and do not receive any incentive pay.

The Employer offers health insurance to all employees using a cafeteria-style plan, where each employee can select the plan that best fits their needs. The Employer also offers a 401(k) plan, dental plan, and vision plan to all employees, including route drivers, mechanics, and container shop employees. There is also an employee handbook that covers all employees at the Dickman facility.

The drivers, mechanics, and container shop employees all use the same time clock. The Employer also holds safety meetings every other week for all employees. The meetings are one hour each and continue throughout the day to accommodate all employees. Furthermore, the drivers, mechanics, and container shop employees, but excluding the office staff, all use the locker room located in the Employer's facility.

Container drivers may call trash drivers and ask them where a container should be placed. A trash driver and a container driver are both expected to identify unsatisfactory waste containers and tag the containers in accordance with applicable department procedures. Moreover, both trash drivers and container drivers are expected to watch for inappropriate waste in a container. Both trash drivers and container drivers are required to have commercial driver's license (CDL), and both participate in the Employer's ReSOP program whereby a supervisor will ride along with an employee to assess their driving skills and overall performance.

Truck technicians can become ASE certified, but it is not required. The Employer is unaware of any certification classes for container shop repairmen. The Employer contends that the trucks are much more complicated than the containers and compactors that the container shop repairmen fix because the containers and cylinders are generally electric powered whereas the trucks run using a diesel engine.

C. Appropriateness of the Single-Location Unit

Section 9(b) of the Act states the Board "shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192, fn. 1 (1965); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enf'd*. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit

compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger’s Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

In determining whether employees in a proposed unit share a community of interest, the Board examines: whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 9 (2011)(internal citations and quotations omitted). “[T]he manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination.” *International Paper Co.*, 96 NLRB 295, 298 fn.7 (1951).

In *Airco, Inc.*, 273 NLRB 348, 349 (1984), citing *Kalamazoo Paper Box Corp.*, 136 NLRB at 136, the Board found a petitioned-for plantwide unit of drivers, mechanics and operators appropriate despite the fact that the employees in these classifications had little contact with each other, and their skills, training and working conditions were different. In addition, in

Marks Oxygen Co., 147 NLRB 228, 230 (1964), the Board found a petitioned-for unit of truck drivers and production and maintenance employees was appropriate even though the drivers performed no duties within the plant, were paid on a trip basis, were under separate supervision and had no interchange.

In asserting that a single unit of route drivers, mechanics, and container shop employees is not appropriate, the Employer argues that these employees have separate supervision, licensing requirements, and are paid differently. While the Employer is correct in its assertion that there are variances in the supervision, licensing requirements, and pay for the petition-for employees, I find that these factual distinctions are not sufficient to overcome the presumptive appropriateness of the petitioned-for unit. Rather, I find that a sufficient community of interest exists between the route drivers, mechanics, and container shop employees to warrant finding the petitioned-for unit appropriate.

The record evidence discloses that the route drivers, mechanics, and container shop employees are functionally integrated. The route drivers are dependent on the mechanics completing repairs. The majority of mechanics do not begin their shifts until the route drivers return to the facility and submit vehicle condition reports. These reports initiate the work of the mechanics, who repair the trucks. The mechanics repair the trucks so that the route drivers are able to promptly start work when they return to the facility early the following morning. Similar to the mechanics in the truck shop repairing trucks so that they are able to continue to run efficiently, the welder and painter in the container shop assist in the process of making sure that containers are safe and available for customers to receive. Without the assistance of the container shop, the empty containers would not reach the customers and trash drivers would not

have trash to collect. All three departments must be properly staffed at the appropriate times so that repairs are done timely and trash is collected on schedule.

The record evidence also reveals that there is significant interaction between the route drivers, mechanics, and container shop employees. The Dickman facility has one building that includes the front office, truck shop, and container shop. All route drivers, mechanics, and container shop employees use the same time clock, attend the same safety meetings, and use the same locker room. Container drivers are also in contact with trash drivers to ensure proper delivery to customers. As discussed above, route drivers and mechanics are connected via the vehicle condition reports.

Furthermore, I conclude that the petitioned-for unit shares distinct terms and conditions of employment. All employees are offered the same health, dental, and vision insurance, 401(k) plan, and all are covered under the same employee handbook. The fact that route drivers are not paid in precisely the same manner as mechanics and container shop employees and that not all job classifications require licenses is not dispositive. See *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964); *Airco, Inc.*, 273 NLRB 348 (1984).

Although the trash collection, truck mechanics, and container shop departments each have their own supervisor, both operations manager Bowers and maintenance manager Poston directly report to assistant general manager Kavanagh, while container shop supervisor Murchison reports directly to Poston. The record reveals that both the mechanics and container shop employees are two levels of supervision away from the common supervision of Poston, and all route drivers, mechanics and container shop employees are under the common supervision of general manager Blevins.

Accordingly, I find, based on the record evidence and factors discussed above, that the Employer has not rebutted the presumption that the petitioned-for single-facility unit is appropriate.

V. CONCLUSIONS AND FINDINGS

Based upon 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 the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner, Maryland Public Employees Council 67 of the American Federation of State, County and Municipal Employees, AFL-CIO, is a labor organization as defined in Section 2(5) of the Act.⁶
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. BFI Waste Services, LLC d/b/a Allied Waste Services of Baltimore or Republic Services of Baltimore, a Delaware limited liability company, with its principal office and place of business in Phoenix, Arizona has been engaged in providing waste disposal services, including at a facility in Baltimore, Maryland, the only

⁶ The parties stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, there is no collective-bargaining agreement covering any of the employees in the unit sought in the petition herein, and that there is no contract bar to this proceeding.

location in these proceedings. During the preceding 12-month period, BFI Waste Services, LLC d/b/a Allied Waste Services of Baltimore or Republic Services of Baltimore, in conducting its business operations described herein, purchased and received at its Baltimore, Maryland facility goods valued in excess of \$50,000 from points outside the State of Maryland.

6. I find 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 part-time drivers, lead drivers, mechanics, lead mechanics, container drivers, painters, welders, helpers, and spotters employed by the Employer at its Dickman facility, but excluding all dispatchers, sales employees, construction representatives, credit and collection specialist, controller, assistant controller, container shop clerk, route auditor, operations clerk, billing processor, accountant, maintenance clerk, maintenance shop supervisor, container shop supervisor, route supervisor, professional employees, office clerical employees, temporary employees, managers, and supervisors defined by the Act.

VI. 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 **Maryland Public Employees Council 67 of the American Federation of State, County and Municipal Employees, AFL-CIO**. 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.). 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, National Labor Relations Board, Region 5, Bank of America Center -Tower II, 100 South Charles Street, Suite 600, Baltimore, Maryland 21201, on or before **June 5, 2014**. 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 by facsimile transmission at (410) 962-2198. 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.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working 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 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 non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **June 12, 2014**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁷ A copy of the request for review must be served on each of

⁷ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a

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the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Issued at Baltimore, Maryland this 29th day of May 2014.

(SEAL)

/s/ CHARLES L. POSNER

Charles L. Posner, Regional Director
National Labor Relations Board, Region 5
Bank of America Center - Tower II
100 South Charles Street – Suite 600
Baltimore, Maryland 21201

statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.