

**BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, DC**

**REPUBLIC SILVER STATE DISPOSAL,  
INC. D/B/A REPUBLIC SERVICES OF  
SOUTHERN NEVADA, AND REPUBLIC  
DUMPCO, INC.,**

**Employers,**

**and**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS AND  
WAREHOUSEMEN, LOCAL 631,**

**Petitioner.**

**Case No. 28-RC-192859**

**PETITIONER’S OPPOSITION TO EMPLOYER’S REQUEST FOR REVIEW  
OF THE REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION**

Pursuant to Section 102.67(f) of the Rules and Regulations of the National Labor Relations Board, International Brotherhood of Teamsters, Chauffeurs and Warehousemen, Local 631 hereby files its opposition to Republic Silver State Disposal, Inc. d/b/a Republic Services of Southern Nevada and Republic Dumpco, Inc.’s request for review of the Regional Director of Region 28’s Decision and Direction of Election issued on March 9, 2017.<sup>1</sup>

The Employer’s request for review fails to identify any defect in the Decision that warrants review. The Employer chiefly takes issue with the Regional Director’s factual determination that the originally petitioned-for unit did not constitute a distinct and identifiable segment of the workforce so as to serve as a proper voting group for an election. The Regional Director committed no clear error in making that finding. Indeed, the Employer admitted at the

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<sup>1</sup> Teamsters Local 631 will be referred to as “Petitioner.” Republic Silver State Disposal, Inc. d/b/a Republic Services of Southern Nevada and Republic Dumpco, Inc. will be referred to as “Employer.” The Regional Director’s Decision and Direction of Election will be referred to as “Decision.” All dates are 2017 except where otherwise noted.

hearing that employees in one petitioned-for classification shared overlapping duties with employees in a non-petitioned-for classification, rendering the scope of the originally proposed unit fragmentary and incoherent. To the extent that the Employer points to any question of law, it raises no substantial question because the Regional Director's application of the law was unexceptional. In the end, the Employer simply disagrees with the Direction in light of the result of the election. It raises no substantial issue warranting review.

### **BACKGROUND**

The Employer is engaged in the business of solid waste collection and disposal in the greater Las Vegas region. It operates under franchise agreements with the City of Las Vegas, Clark County, the City of North Las Vegas, and other smaller political subdivisions in the Southern Nevada market area. It operates four facilities: the Cheyenne Transfer Station ("Cheyenne"); the Henderson Transfer Station ("Henderson"); the Apex Landfill ("Apex"); and the smaller Laughlin Landfill (a division of Apex.) The Employer's drivers collect residential, commercial and industrial waste and haul it to the Cheyenne or Henderson transfer stations. Members of the public can also dump residential refuse at these transfer stations. Equipment operators load the waste from the transfer stations for transport to Apex, or to a limited extent, Laughlin, where the waste is landfilled. Apex also collects waste directly from third parties and from members of the public, and operates a small collections operation for nearby municipalities.

The Petitioner has long represented a bargaining unit consisting of the Employer's production and maintenance employees in the Southern Nevada market area. This bargaining unit comprises drivers, heavy equipment operators, mechanics, and utility employees across several classifications. There are over 900 employees in the existing bargaining unit. Tr. 271; 417; 569. The present representation proceeding arises out of the Petitioner's efforts to add

additional classifications of the remaining unrepresented employees to the represented bargaining unit.

On February 10, the Petitioner filed a petition for a single bargaining unit of employees in two classifications that the parties subsequently agreed to refer to as “gate attendants/scale operators” and “paper pickers” (according to their corporate demarcations.) The Employer employs members of the gate attendant/scale operator classification at all three facilities primarily at issue herein: Cheyenne, Henderson and Apex.<sup>2</sup> The Employer employs paper pickers only at Apex. The Petitioner sought a self-determination election in order that these employees could choose to join the existing bargaining unit. *See Armour & Co.*, 40 NLRB 1333 (1942); *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990).

The Employer opposed the proposed unit. It argued that the appropriate unit for bargaining was at the facility level, such that there should be three separate bargaining units at Cheyenne, Henderson and Apex. Tr. 24-25; 659; EX 1. While the Employer initially proposed to include certain dispatchers at Cheyenne and an operations clerk at Henderson owing to an overlap in their duties with the gate attendant/scale operators at Apex, Tr. 25, the Employer later indicated it did not contest the classifications sought by the petition. It continued to contest a multiplant unit.

Following an evidentiary hearing, the Regional Director issued the Decision. He ordered that a self-determination election be held for a voting group comprising the multiplant area that is the basis for the existing production and maintenance unit. He also found that the petitioned-for classifications of gate attendant/scale operators and paper pickers did not form “an identifiable, distinct segment so as to constitute an appropriate voting group” for purposes of a self-determination election. *See Warner-Lambert Co.*, *supra* 298 NLRB at 995. But the

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<sup>2</sup> There is a single employee at issue in Laughlin. Her status is addressed below.

Regional Director concluded that a voting group including those two classifications plus other residual, unrepresented classifications sharing a community of interest with the existing bargaining unit would form an appropriate bargaining unit. Thus, the Regional Director included within the proposed bargaining unit the following classifications: gate attendant/scale operators, paper pickers, dispatchers, operations clerks, dossier clerks, purchasing clerks, and environmental technicians. He also ordered that the ballot be structured to afford these employees the choice whether they wanted to be represented as part of the existing unit, or whether they wanted to be represented in a stand-alone unit.

The Petitioner agreed at hearing that it would seek to represent any bargaining unit that the Regional Director deemed to be appropriate. Tr. 50; 425. Accordingly, a representation election was conducted on March 15. Employees voted by a margin of 42-14 in favor of representation and by 43-8 in favor of inclusion in the existing unit. *See* Tab A, attached hereto. The Petitioner was certified on March 24.

### **ARGUMENT**

**I. The Board should reject the Employer’s challenge because the Union that it would represent any unit in which the Regional Director ordered an election.**

The Employer’s request for review should be denied for the basic reason that the Petitioner agreed to an election in any unit that the Regional Director determined was appropriate. Tr. 50; 425. This moots the issue whether there might be some *other* unit that was also appropriate because the Employer does not challenge the appropriateness of the larger unit in which election was ultimately held.<sup>3</sup>

The purpose of a unit determination is to “assure to employees the fullest freedom in

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<sup>3</sup> The Employer only contends that the Regional Director failed to show that the larger unit shares an overwhelming community of interest with the originally petitioner-for one. *See* discussion *infra*.

exercising the rights guaranteed by the Act.” *i.e.*, the rights of self-organization and collective bargaining. *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934, 942 (2011), quoting Section 9(b) of the Act. Those Section 7 rights have been assured here because employees were afforded the opportunity to vote in an appropriate unit and they did so by a large margin in favor of union representation. Because that unit is facially appropriate and because the Petitioner agreed to represent it, the Employer cannot contend that guaranteeing employees’ Section 7 rights is any longer the issue. Rather, this is clearly now simply a case of the Employer trying to *defeat* those Section 7 rights.

The Employer’s effort to “vindicate” the Section 7 rights of its employees by arguing that the election results should be discarded is self-serving and unconvincing. An election was held in an appropriate unit and employees voted for representation. There are no legitimate considerations that should serve to undo their choice.

**II. The Employer misstates the law by arguing that a self-determination election cannot be held where a voting group otherwise constitutes an appropriate bargaining unit.**

The Employer argues that the Regional Director committed legal error by ordering a self-determination election for a voting group that could itself stand as a separate appropriate bargaining unit. The Employer posits that self-determination elections are only proper when the group to be added to an existing unit cannot stand on its own.

This is a misstatement of the law. In *St. Vincent Charity Medical Center*, 357 NLRB 854, 855 (2011), the Board repeated the rule that the “petitioned-for employees [in a self-determination election] *need not* constitute a separate appropriate unit by themselves in order to be added to an existing unit.” 357 NLRB at 855 (emphasis added); *see also Warner-Lambert Co.*, 398 NLRB at 995. The phrase “need not” means exactly what it says: the voting group in a self-determination election *need not* constitute a separate appropriate unit, but it *can*.

The NLRB has routinely used the vehicle of a self-determination election to allow employees to choose between representation as a part of a larger, existing unit or a smaller, stand-alone one. In fact, in *Armour and Company*, 40 NLRB 1333 (1942), the three departments that the petitioning union sought to add to an existing unit (by what came to be known as an *Armour-Globe* election) was each previously found to be a separate appropriate bargaining unit. *Id.* at 1335. Since then, the Board has regularly used self-determination elections to allow employees to choose between representation in a separate stand-alone unit or a combined unit, structuring the ballot choice to reflect the different possible outcomes. *See, e.g., Fisher Corp., Ltd.*, 128 NLRB 504, 505 (1960); *Thatcher Glass Mfg. Co., Inc.*, 97 NLRB 238, 240 (1951); *Pioneer Holding Co.*, 132 NLRB 954 (1961). The Board has never ruled that self-determination elections are appropriate only where the exclusive choice is to join the larger unit.

The Employer's erroneous statement of the law is based upon a footnote in *Beverly Health and Rehabilitation Services*, 322 NLRB 968, n. 12 (1997). There, an Administrative Law Judge stated in *dicta* that "an unrepresented group of employees who constitute an appropriate unit themselves are not eligible for self-determination purposes generally." *Id.* (citing *Ward Baking Co.*, 139 NLRB 1344 (1962)). *Ward Baking* involved a contest between an incumbent union and a challenging union which sought to represent both the incumbent's members as well as other unrepresented facilities of the employer. The Board directed elections in separate units consisting of currently represented employees and unrepresented employees because, in one instance, it found that the unrepresented employees (which numbered as many as the represented employees) did not constitute a "fringe group" such that the "representation of the presently represented employees [should] depend on the wishes of a virtually equal number of unrepresented employees" and in another instance, the unrepresented employees all worked at a

single, separate facility. *Id.* at 1349-1351.

*Ward Baking* does not support a broad principle that self-determination elections cannot be held except when the petitioned-for employees do not form an appropriate unit by themselves. That is not what the Board stated in *St. Vincent Charity Medical Center*, 357 NLRB at 855 and *Warner-Lambert Co.*, 298 NLRB at 995. It is not how the Board has used the self-determination election vehicle in many contexts. The Employer's newfangled principle should be rejected.

**III. The Regional Director correctly ruled that the petitioned-for unit of gate attendant/scale operators and paper pickers did not constitute an “identifiable, distinct segment” of the workforce, but that a residual unit did.**

The Regional Director ruled that the originally petitioned-for unit of gate attendant/scale operators and paper pickers did not constitute an identifiable, distinct segment of the workforce so as to make a self-determination election proper. The Employer challenges this finding. But the Regional Director's unexceptional factual determination raises no basis for review under Section 102.76(d) of the Rules and Regulations.

A. The finding that the petitioned-for voting group was not a rational voting group is a factual determination that was not clearly erroneous.

The Regional Director found that the originally petitioned-for unit hobbled together two classifications of employees that together formed an arbitrary segment of the workforce. The basis of his decision was two-fold. First, key duties performed by gate attendant/scale operators at Apex are performed by dispatchers at Cheyenne and Henderson, rendering the line between unit inclusion and unit exclusion arbitrary. Second, there was no logical reason to group gate attendant/scale operators together with paper pickers, but not with other classifications excluded from the proposed unit. Decision, p. 18. A review of key record evidence makes clear that the Regional Director did not err on either count.

By their name, gate attendant/scale operators would seem to share two main functions: to

attend to the gate and to operate the scales. But this was not the case. At Cheyenne and Henderson, gate attendant/scale operators actually do not operate any scales. Rather, the task of operating the scales is performed by dispatchers at Cheyenne and by operation clerks at Henderson. These employees weigh the vehicles entering the facility and process that information on the company's computerized tracking system. Tr. 149; 252; 255; 257; 520-521, 560. In contrast, gate attendant/scale operators operate the scales at Apex. Tr. 377-378<sup>4</sup>

There are other significant differences between the functions of gate attendant/scale operators at Apex on the one hand and Cheyenne and Henderson on the other. At Cheyenne and Henderson, the gate attendant/scale operators work outside at a shed. They greet customers and measure with a tape measure the volume of the load that customers bring in. Tr. 248-251; 536-538. They also perform the task of "spotting" customers at the transfer station building itself located some distance from the shed. This task involves directing public customers to the correct location to dump their refuse while assuring that the public is kept a safe distance from heavy equipment operators. Tr. 150-151. In performing this task, gate attendant/scale operators have regular contact with equipment operators who move refuse around the facility, as well as other employees. Tr. 234-241. Gate attendant/scale operators at Cheyenne and Henderson also have responsibility for auditing paperwork, which includes regularly driving to customers' stated addresses to ascertain whether the amount of waste they are dumping is commensurate with the type of building at the address (to guard against misuse of the right to dump residential waste). Tr. 242; 250; 542-545. Cheyenne General Manager Jim Rankin in particular emphasized the difference in job duties necessary for the gate attendant/scale operator classification owing to the

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<sup>4</sup> While only 4 out of the 16 Cheyenne dispatchers regularly perform the scale attendant duty, all of them are trained in the operations of the scales. Tr. 369. When the dispatchers are not performing scale attendant duties, they are performing other dispatcher duties, described below. Tr. 369. Meanwhile, an "all purpose" employee operates the scales in Laughlin. Tr. 415.

size and complexity of the Cheyenne operation. Tr. 156-157; 212-213.

In contrast, gate attendant/scale operators at Apex spend 99% of their time working inside a gatehouse. Tr. 377. Their chief function is to weigh vehicles entering the facility, to process the data, and to process customer payment. Tr. 381. They do not measure the volume of the load and they leave the gatehouse only “very rarely” to spot check material to assure that regulated material is not included. Tr. 381-382. They receive specialized training for that purpose. Tr. 398-403. There was no evidence that they perform the function of spotting customers dumping refuse as at Cheyenne and Henderson or that they perform the audit function by checking on customers’ residences.

But while gate attendant/scale operators do not perform tasks that gate attendant/scale operators perform at Cheyenne and Apex, they do perform tasks in addition to operating scales that only *dispatchers* perform at these transfer stations. First, like dispatchers at Cheyenne and Henderson, gate attendant/scale operators at Apex field telephone calls from the public and route customer concerns to management. Tr. 474. Second, gate attendant/scale operators at Apex perform the task of debriefing drivers at the end of their shifts to record incidents that may have occurred on the route, and they process drivers’ pre-trip and post-trip inspection reports. Tr. 475. This work is performed at Cheyenne and Henderson by dispatchers. Tr. 320; 555; 562-564; 593. Based on the entire record, it is clear that gate attendant/scale operators at Apex actually have more in common with dispatchers at Cheyenne and Henderson than they do with gate attendant/scale operators at those transfer stations.

The Employer acknowledged the ill-defined boundary between the dispatcher and gate attendant/scale operator classifications. Counsel stated the Employer’s opening position with respect to dispatchers and gate attendant/scale operators as follows:

With respect to the—turning to the unit placement issues, it is our position that at the Cheyenne facility, there should be added to the Cheyenne unit four dispatchers, and then in parentheses, scale operators. And then there should be one operations clerk, and in parentheses scale operator added to the Henderson unit. We don't have any additional employees add at the Apex unit.

And, in a nutshell, those additional employees should be added to those units because they perform essentially the same functions in terms of weighing and scale work as those employees that the Union has petitioned to represent at those facilities.

Tr. 25; *see also* Tr. 36-37. The Employer later withdrew that position for what appeared to be tactical reasons. But the Employer's statement demonstrates that there can be no clear error in the Regional Director's factual findings to the exact same effect.

The Regional Director also found no rational basis for grouping gate attendant/scale operators with paper pickers. The five paper pickers at Apex perform none of the duties of gate attendant/scale operators. Their job is to collect litter that blows around the landfill. Tr. 382-383. They have also performed janitorial and other cleaning work, and their job duties overlap with those of unionized utility workers. Tr. 383-384; 461-463; 472-473. They are separately supervised from gate attendant/scale operators. Tr. 387-388; 488. They do not receive the training that gate attendant/scale operators at Apex receive. Tr. 400; 403. Based on all this, the Regional Director could reasonably conclude that gerrymandering paper pickers and gate attendant/scale operators together did not create a coherent voting group, either when considered alone or when considered against classifications that are excluded from the group.

In the face of this evidence, the Employer's only argument is that the petitioned-for employees form a distinct voting group because they are customarily called "outside" employees as opposed to "inside" employees. But this is a distinction without a difference. Labels such as "inside" and "outside" employees do not serve to differentiate their overlapping duties;

moreover, the gate attendant/scale operators at Apex spend 99% of their time working *inside* a building, a fact that is not surprising when one considers the significant commonality between their duties and the duties of dispatchers. Given the lack of cohesiveness between the petitioned-for classifications and the overlap of duties between petitioned-for and non-petitioned-for classifications, the Regional Director’s factual finding that the proposed voting group was not distinct and identifiable was not clearly erroneous on the record. *Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011) (“A petitioner cannot fracture a unit, seeking representation in “an arbitrary segment” of what would be an appropriate unit.”); *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999).

B. The Employer raises no substantial question of law in seeking to graft *Specialty Healthcare* onto the present scenario.

The Employer argues that the Regional Director failed to demonstrate an “overwhelming community of interest” between employees in the larger residual unit in which he order an election and the originally petitioned-for unit. The Employer submits that this showing was required under *Specialty Healthcare, supra*, 357 NLRB 934. It is not.<sup>5</sup>

In *Specialty Healthcare, supra*, 357 NLRB 934, the Board clarified that when a labor organization petitions for an election in a unit of employees that share a community of interest based on traditional criteria, it is incumbent upon a party contending that those employees should be placed in a larger appropriate unit to show that employees in the larger unit share an overwhelming community of interest with the petitioned-for employees so as to render the originally proposed unit inappropriate. *Id.* at 945-946.

At the outset, the reasoning of *Specialty Healthcare* is inapposite to this case because it

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<sup>5</sup> The Employer does not argue here that the residual unit was not an appropriate one for bargaining, but just that the community of interest was not overwhelming.

addresses a different issue. The focus of the Board’s decision was to address the circumstance in which a *party* (usually an employer) could defeat a unit petitioned-for by a union or employees on the basis that a larger unit was more appropriate. That is not what is happening here. Notably, the Board decided *St. Vincent Charity Medical Center*, *supra*, 357 NLRB 854 on August 26, 2011, the same day as it decided *Specialty Healthcare*. In *St. Vincent Charity Medical Center*, the Board admonished that a self-determination election is appropriate for adding unrepresented employees to an existing unit where they “constitute an identifiable, distinct segment so as to constitute an appropriate voting group.” *Id.* at 855. In reaching that decision, the Board did not review the regional director’s direction of an election in the larger unit by applying the “overwhelming community of interest” analysis it had clarified the same day in *Specialty Healthcare*.<sup>6</sup>

But even if *Specialty Healthcare* bears upon the present case, the Employer misstates its application. In deciding *Specialty Healthcare*, the Board did not abandon the requirement that a group of employees that are the subject of an election petition form a “readily identifiable a group;” rather, the parties in the case agreed that the petitioned-for classification of certified nursing assistants were properly grouped and the Board found that that was so. 357 NLRB at 936, 945. Far from abandoning the rule against arbitrary voting groups, the Board went on to emphasize that it would “not approve fractured units, *i.e.*, combinations of employees that are too narrow in scope or that have no rational basis.” *Id.* at 946 (quoting *Seaboard Marine*, 327 NLRB 556, 556 (1999); *see also Bergdorf Goodman*, 371 NLRB No. 11 (2014); *Odwalla, Inc.*, *supra*, 357 NLRB 1608, 1612 (2011)).

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<sup>6</sup> The Employer disingenuously states that the Regional Director “emphasized” the ruling in *Specialty Healthcare*, as if he conceded the applicability of the case. Request for Review, p. 12. The Regional Director did not do such thing. He stated that the Board has not found that the *Specialty Healthcare* framework applies, but explained that, *even if* it applies, the petitioned-for unit was still not appropriate. Decision, p. 18.

The Regional Director's determination that the petitioned-for unit of gate attendant/scale operators and paper pickers constituted an arbitrary segment of the workforce, both when viewed *vis-à-vis* one another and with respect to the remaining workforce as a whole, constituted a finding of fact that was not clearly erroneous. As discussed above, there are multiple reasons why a unit of gate attendant/scale operators and paper pickers did not form a distinct and identifiable unit for voting. Therefore, even assuming *arguendo* that *Specialty Healthcare* applied to this analysis, the Regional Director is not required to show an "overwhelming community of interest" for the larger unit because the smaller unit did not meet the threshold cohesiveness requirement. Accordingly, the Employer presents no basis for granting review of the Decision.

**IV. The Regional Director correctly ruled that operations clerks, dossier clerks, and purchasing clerks are "plant clericals" that share a community of interest with the existing production and maintenance unit.**

The Regional Director determined that certain unrepresented classifications were also properly includable in the larger existing unit as plant clerical employees to the extent of their performance of such functions. Decision, p. 20. These classifications were: dispatchers, operation clerks, dossier clerks and purchasing clerks. The Employer challenges the inclusion of these employees on the asserted basis that they are office clericals, not plant clericals, and therefore do not share a community of interest with the existing production and maintenance unit. The Employer has failed to show the existence of clear error on the record and there is no cause to grant review.

The Board has stated that the test for whether a clerical employee is a plant clerical is "generally whether the employees' principal functions and duties related to the production process, as distinguished from general office operations." *Kroger Co.*, 342 NLRB 202, 204

(quoting *Caesar's Tahoe*, 337 NLRB 1096, 1098 (2002)).

The Regional Director properly included the 16 dispatchers at Cheyenne and the five dispatchers at Henderson in the unit. At Cheyenne, four of the dispatchers perform the work of scale operators by weighing vehicles entering the facility and tracking the information on the company's computerized tracking system. Tr. 255. Both at Cheyenne and Henderson, all of the dispatchers serve as the conduit for information between management and drivers regarding various operational needs, including complaints by customers, driver request for assistance, and other routing issues. Tr. 255-256; 551-555; 590-593. Dispatchers run the employee call-in line for attendance purposes. Tr. 255. They engage with drivers in a debriefing process at the end of the day to ensure that issues that may have occurred on the route are recorded and that vehicle maintenance reports have been completed. Tr. 320; 555; 562-564; 593. Through these activities, they have extensive contact with drivers. Based on facts similar to these, the Board has ruled that dispatchers are not office clericals, and are properly includible within a larger production unit. *See Pioneer Holding Co., supra*, 132 NLRB at 955 (finding that dispatchers were properly subject to inclusion with a unit consisting of taxi drivers and that they were not properly part of an office clerical unit); *Yale & Towne Mfg. Co. (Philadelphia, Pa.)*, 112 NLRB 1268, 1270 (1955) (finding that "dispatchers . . . are plant clerical employees such as the Board customarily includes in production and maintenance units and excludes from office clerical units").

The Regional Director was also correct to include operations clerks as plant clericals. The Employer employs an operations clerk at Cheyenne whose duties are exactly the same as the dispatchers described above: communicating to drivers; handling route information; debriefing, and so forth. Tr. 321. That operations clerk was properly included for the same reason that the dispatchers are included. The Employer also employs an operations clerk at Henderson whose

job it is to operate the scales that the dispatchers operate at Cheyenne and that the gate attendant/scale operators operate at Apex. Tr. 564; 575-576. That operations clerk was properly included in the unit because he performs the same work as other included employees, and his work is geared towards the production process. The Employer employs a second operations clerk at Henderson whose job is to input new route information into a computer and to make changes to driver routing based on customers' changing addresses. Tr. 558-559. This employee also covers for the operations clerk whose job it is to operate the weighing scales. Tr. 560. Once again, these operations clerks perform clerical and related functions that are inextricably related to the production process. They were properly included in a production and maintenance unit.

The Employer employs a number of "Dossier clerks," that is, employees who are trained to operate a computer program called Dossier that tracks vehicle maintenance and related issues. Tr. 550. Cheyenne employs two Dossier clerks. One of these is principally responsible for entering work orders from mechanics into Dossier as well as for maintaining up-to-date the fleet's DMV registrations. Tr. 331-332. The second Dossier clerk focuses on maintaining records pertaining to the delivery and maintenance of containers. Tr. 332-333. They are supervised by the supervisor of the maintenance shop and cover for one another's duties. Tr. 334. Henderson employs one Dossier clerk who is also responsible for entering information concerning vehicle repairs and maintenance into the tracking system. Tr. 521; 551-553. Apex employs one Dossier clerk. His job is to input information from the vehicle inspections reports that the gate attendant/scale operators collect from drivers, as well as to input purchasing and mechanics reports in the company's maintenance tracking program. Tr. 476. He handles these reports for the Laughlin facility as well. Tr. 476. He also handles purchasing and inventory. Tr. 476; 489. He interacts with mechanics on a daily basis. Tr. 490. Finally, Henderson employs a

purchasing clerk who works in the maintenance department. Tr. 566. This clerk places purchasing orders for materials needed in the maintenance department, and is responsible for inventorying that material when it comes in. Tr. 567. The work of all of the foregoing employees is geared towards facilitating the production and maintenance process and their work is bound up with the work of the bargaining unit. *Kroger Co.*, 342 NLRB at 204.

The Regional Director's determination that these employees are properly included in the production and maintenance unit was a straightforward application of Board law to the facts. The Employer did not bear its burden to show that they should be excluded from eligibility in the unit. *Queen Kapiolani Hotel*, 316 NLRB 664-665 (1995) (party seeking to exclude an individual from voting for a collective-bargaining representative has burden of establishing that individual is ineligible to vote).

### **CONCLUSION**

For all the foregoing reasons, the Employer's request for review should be denied in all respects.

Dated: April 25, 2017

Respectfully submitted,  
McCRACKEN, STEMERMAN, HOLSBERRY, LLP

/s/Eric B. Myers

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**TAB A**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**REPUBLIC SILVER STATE DISPOSAL, INC., d/b/a REPUBLIC SERVICES OF SOUTHERN NEVADA, AND REPUBLIC DUMPCO, INC.**

**Employer**

and

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, LOCAL 631**

**Petitioner**

Case No: **28-RC-192859**

Date Filed: **February 10, 2017**

Date Issued: **March 15, 2017**

TYPE OF ELECTION  
(Check one:)

(If applicable check either or both:)

STIPULATION

8(b) (7)

CONSENT AGREEMENT

Mail Ballot

BOARD DIRECTION

RD DIRECTION

INCUMBENT UNION (CODE)

**CORRECTED TALLY OF BALLOTS / Question 1**

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters .....	64	
2. Number of Void Ballots .....	0	
3. Number of Votes cast for <b>INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, LOCAL 631</b> .....		42
4. Number of Votes cast for _____ .....		XXXXXXXX
5. Number of Votes cast for _____ .....		XXXXXXXX
6. Number of Votes cast against participating labor organization(s) .....		14
7. Number of Valid votes counted (sum of 3, 4, 5, and 6) .....		56
8. Number of Challenged Ballots .....		4
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) .....		60
10. Challenges are <b>(not)</b> sufficient in number to affect the results of the election.		
11. A majority of the valid votes counted plus challenged ballots (item 9) has (XXX) been cast for <b>INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, LOCAL 631</b>		

For the Regional Director, Region 28

*/s/ Christopher J. Giardina*

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For: **REPUBLIC SILVER STATE DISPOSAL, INC., d/b/a REPUBLIC SERVICES OF SOUTHERN NEVADA, AND REPUBLIC DUMPCO, INC.**

For: **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, LOCAL 631**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

REPUBLIC SILVER STATE DISPOSAL,  
INC., d/b/a REPUBLIC SERVICES OF  
SOUTHERN NEVADA, AND REPUBLIC  
DUMPCO, INC.

Employer

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN, LOCAL 631

Petitioner

Case No: 28-RC-192859 Date Filed: February 10, 2017

Date Issued: March 15, 2017

TYPE OF ELECTION  
(Check One)

- STIPULATION
- CONSENT AGREEMENT
- BOARD DIRECTED
- RD DIRECTION

(If applicable, check  
either or both.)

8(b)(7)

Mail Ballot

INCUMBENT UNION (CODE)

TALLY OF BALLOTS / Question 2

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters..... 64
- 2. Number of Void Ballots..... 5
- 3. Number of Votes cast for inclusion with existing unit..... 43
- 4. Number of Votes cast against inclusion with existing unit ..... 8
- 5. Number of Votes cast for ..... XXXXXXXX
- 6. Number of Votes cast for ..... XXXXXXXX
- 7. Number of Votes counted (sum of 3, 4, 5 and 6)..... 56
- 8. Number of Challenged Ballots..... 4
- 9. Number of Valid Votes counted plus challenged ballots (sum of 7 and 8)..... 60
- 10. Challenges are (not) sufficient in number to affect the results of the election.
- 11. A majority of the valid votes counted plus challenged ballots (item 9) has (not) been cast for inclusion with existing unit.

For the Regional Director, Region 28

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For **REPUBLIC SILVER STATE DISPOSAL, INC.,  
d/b/a REPUBLIC SERVICES OF SOUTHERN  
NEVADA, AND REPUBLIC DUMPCO, INC.**

For **INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,  
LOCAL 631**

Sue Hunsberger  
Sue Hunsberger

Tom Goetz  
Tom Goetz